Katherine Ryan
6106 S. University Avenue
Apartment 411
Chicago, I.L. 60637
631.495.8685

June 8, 2023

The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
600 Granby Street
Norfolk, V.A. 23510

Dear Judge Walker:

I am a rising third-year law student at the University of Chicago Law School, and I am applying for a clerkship in your chambers for the 2024 term. I have close friends and family in the Virginia Beach area, and I would welcome the opportunity to apply my analytical, research, and writing skills to the work of the United States District Court for the Eastern District of Virginia.

I developed my analytical skills in employment and academic settings. Before law school, I worked as a financial controls auditor, first in the private sector and later at the Federal Reserve. In that position, I conducted extensive research and analysis related to internal data, and benchmarked that data against relevant federal regulations to assign audit scores and write audit reports. My legal education has further developed these skills, and I have put them into practice as a litigation intern at the U.S. Department of Justice and as a summer associate at Latham and Watkins in Washington, D.C.

I also have strong research and writing skills. Throughout law school, I have researched statutes, regulations, and common law to draft memos and mock appellate briefs. Given my performance during my first year of law school, I was invited to serve as a Legal Writing Fellow and join *The George Washington University Law Review*. After transferring to the University of Chicago, I continued to refine those skills as the Managing Editor of *The Chicago Journal of International Law.* While serving in that role I produced my student comment, which will be published later this year.

A resume, transcript, writing sample, and letters of recommendation from Judge Diane Wood and Professors Sheri Lewis and Brooke McDonough are enclosed. The University of Chicago has not posted all grades for the spring quarter, but I will provide an updated transcript when they do so. Should you require additional information, please do not hesitate to contact me.

Sincerely,

Katherine Ryan

Katherine Ryan

Katherine Ryan

6106 S. University Avenue Apartment 411, Chicago, IL 60637 | kryan7@uchicago.edu | 631.495.8685

EDUCATION

The University of Chicago Law School **Chicago, IL**
Juris Doctor Candidate *Expected June 2024*
- Honors: Latham and Watkins Scholars Program, White Collar Defense and Investigations
- Activities: Managing Editor, *Chicago Journal of International Law* | Moot Court Board | First Generation Professionals

The George Washington University Law School **Washington, DC**
Juris Doctor Candidate *August 2021 - May 2022*
Cumulative GPA: 3.81
- Honors: George Washington Scholar (top 1-15% of class)
- Activities: Law and Economics Society | Law Association of Women Legal | Writing Fellows program

Binghamton University, State University of New York **Binghamton, NY**
Bachelor of Science in Accounting, summa cum laude *August 2015 - May 2019*
Cumulative GPA: 3.97
- Honors: Dean's List | The President's Circle of Excellence | PwC Scholar | BU Scholar
- Activities: Resident Assistant | Tour Guide | Business Calculus Tutor | Study Abroad, Maynooth University of Ireland

PUBLICATIONS

Brexit Backslide: How the United Kingdom's Break from the European Union Could Erode Female Labor Rights
The Chicago Journal of International Law *Upcoming, Volume 24*
- Analyzed the impact of E.U. law on U.K. labor rights to illustrate the consequences of the recent Revocation and Reform Bill

WORK EXPERIENCE

Latham and Watkins **Washington, DC**
Summer Associate *May 2023 - Present*
- Conduct legal research and draft memoranda about sanctions, foreign investment, and income tax to aid attorneys and clients
- Attend client meetings, practice area information sessions, and firm events to better understand client-facing legal work
- Invited to the White Collar Defense and Investigations Scholars Program for academic achievement and practice area interest

The Department of Justice, Civil Division **Washington, DC**
Aviation, Space, and Admiralty Litigation Summer Intern *May 2022 - August 2022*
- Conducted legal research and drafted memoranda about the Federal Tort Claims Act to aid attorneys as they prepare for trial
- Attended depositions, meetings with expert witnesses, and pre-trial hearings to better understand the litigation process
- Received the J.B. and Maurice C. Shapiro Public Service Grant for summer funding from the George Washington University

The Federal Reserve, Office of the Inspector General **Washington, DC**
Financial Management and Internal Controls Auditor *December 2020 - August 2021*
- Performed industry research, stakeholder interviews, fieldwork testing, and report writing for audits of the FRB and CFPB
- Analyzed performance metrics to determine if the FRB and CFPB had made tangible improvements related to past audits
- Engaged with employees across the Federal Reserve as a member of Toastmasters and the Female Employee Resource Group

RSM US, LLP **New York, NY**
Process Risk and Controls Consulting Associate *July 2019 - December 2020*
- Verified the accountability of government institutions and financial entities through internal audits and SOX 404(b) testing
- Utilized accounting software tools such as Auditor Assistant, Collaborate, and Adobe to push projects to timely completion
- Regularly interacted with female and intergenerational employees through involvement in employee networking groups

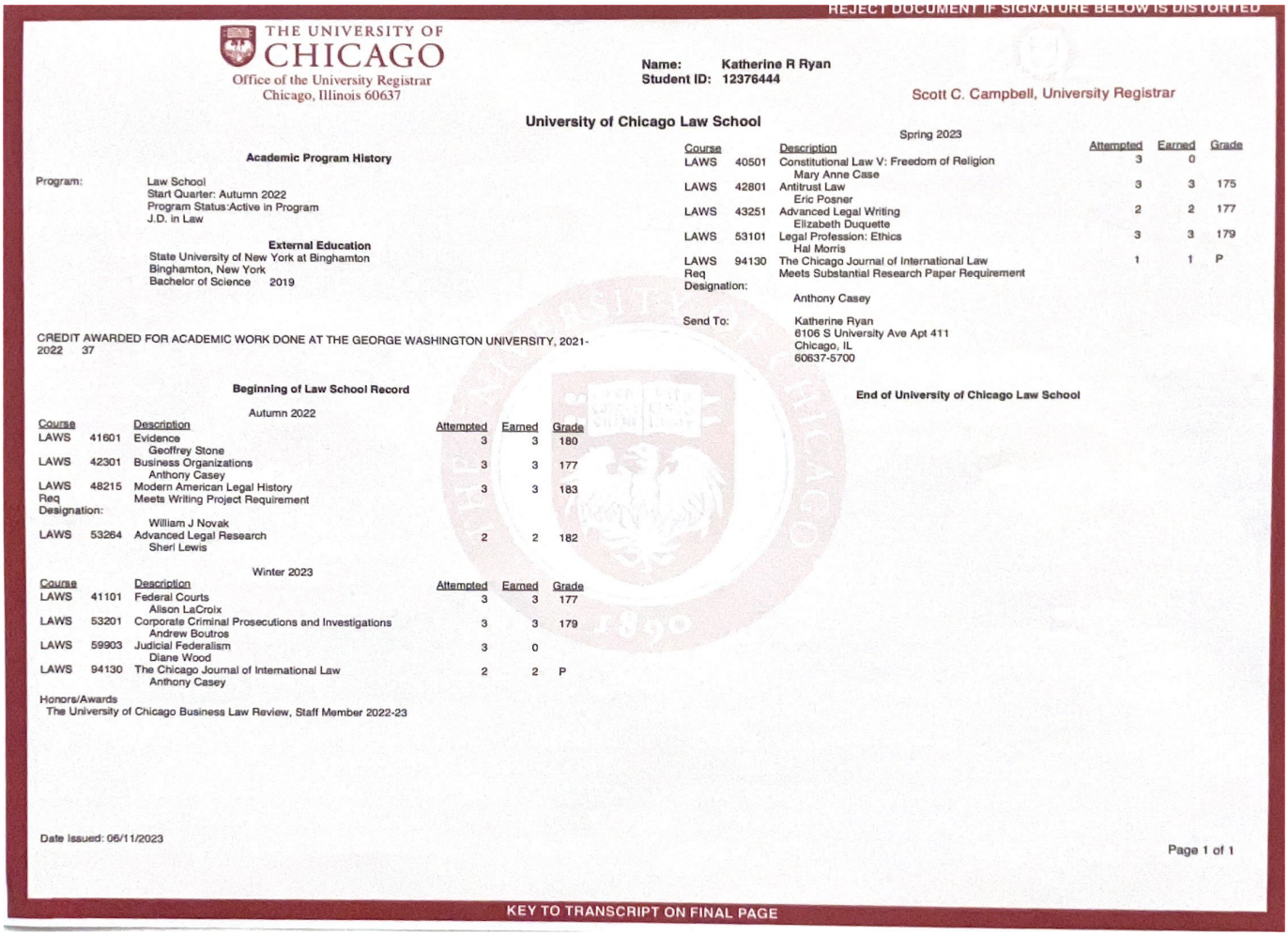
VOLUNTEER EXPERIENCE

British Institute of International and Comparative Law **London, U.K.**
Human Rights Summer Fellow *Incoming, August 2023*
- Will serve as a research assistant for BIICL fellows to aid their work on retained E.U. law reform in the United Kingdom

Lazarus Rising **Binghamton, NY**
Volunteer *January 2016 - May 2019*
- Met one-on-one with multiple homeless Binghamton residents to assist their successful entry into the workforce
- Critiqued resumes and offered mock interviews to better prepare individuals for upcoming meetings with potential employers
- Maintained lasting relationships via email and phone calls to offer continued advice on professional betterment

INTERESTS AND SKILLS

Interests: Finance, running (10Ks and half marathons), bike riding, reading (historical fiction and biographies), cooking
Skills: Legal research and writing, interpretation of financial statements, SOX 404(b) auditing, CRP and first aid certified



REJECT DOCUMENT IF SIGNATURE BELOW IS DISTORTED

THE UNIVERSITY OF CHICAGO
Office of the University Registrar
Chicago, Illinois 60637

Name: Katherine R Ryan
Student ID: 12376444

Scott C. Campbell, University Registrar

University of Chicago Law School

Academic Program History

Program: Law School
Start Quarter: Autumn 2022
Program Status:Active in Program
J.D. in Law

External Education

State University of New York at Binghamton
Binghamton, New York
Bachelor of Science 2019

CREDIT AWARDED FOR ACADEMIC WORK DONE AT THE GEORGE WASHINGTON UNIVERSITY, 2021-2022 37

Beginning of Law School Record

Autumn 2022

Course		Description	Attempted	Earned	Grade
LAWS	41601	Evidence Geoffrey Stone	3	3	180
LAWS	42301	Business Organizations Anthony Casey	3	3	177
LAWS	48215	Modern American Legal History Req Designation: Meets Writing Project Requirement William J Novak	3	3	183
LAWS	53264	Advanced Legal Research Sheri Lewis	2	2	182

Winter 2023

Course		Description	Attempted	Earned	Grade
LAWS	41101	Federal Courts Alison LaCroix	3	3	177
LAWS	53201	Corporate Criminal Prosecutions and Investigations Andrew Boutros	3	3	179
LAWS	59903	Judicial Federalism Diane Wood	3	0	
LAWS	94130	The Chicago Journal of International Law Anthony Casey	2	2	P

Honors/Awards
The University of Chicago Business Law Review, Staff Member 2022-23

Spring 2023

Course		Description	Attempted	Earned	Grade
LAWS	40501	Constitutional Law V: Freedom of Religion Mary Anne Case	3	0	
LAWS	42801	Antitrust Law Eric Posner	3	3	175
LAWS	43251	Advanced Legal Writing Elizabeth Duquette	2	2	177
LAWS	53101	Legal Profession: Ethics Hal Morris	3	3	179
LAWS	94130	The Chicago Journal of International Law Req Designation: Meets Substantial Research Paper Requirement Anthony Casey	1	1	P

Send To: Katherine Ryan
6106 S University Ave Apt 411
Chicago, IL
60637-5700

End of University of Chicago Law School

Date Issued: 06/11/2023

Page 1 of 1

KEY TO TRANSCRIPT ON FINAL PAGE

OFFICIAL ACADEMIC DOCUMENT

THE UNIVERSITY OF CHICAGO

Key to Transcripts of Academic Records

1. Accreditation: The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit http://ctl.uchicago.edu/policies/disclosures.

2. Calendar & Status: The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 7 Doctoral Residence Status.

3. Course Information: Generally, courses numbered from 10000 to 29999 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 30000 and above meet requirements for higher degrees.

4. Credits: The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 8 for Law School measure of credit.

5. Grading Systems:

Quality Grades

Grade	College & Graduate	Business	Law
A+	4.0	4.33	
A	4.0	4.0	186-180
A-	3.7	3.67	
B+	3.3	3.33	
B	3.0	3.0	179-174
B-	2.7	2.67	
C+	2.3	2.33	
C	2.0	2.0	173-168
C-	1.7	1.67	
D+	1.3	1.33	
D	1	1	167-160
F	0	0	159-155

Non-Quality Grades

I	**Incomplete:** Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade, the change is reflected by a quality grade following the mark I, (e.g. IA or IB).
IP	**Pass** (non-Law): Mark of I changed to P (Pass). See 8 for Law IP notation.
NGR	**No Grade Reported:** No final grade submitted
P	**Pass:** Sufficient evidence to receive a passing grade. May be the only grade given in some courses.
Q	**Query:** No final grade submitted (College only)
R	**Registered:** Registered to audit the course
S	**Satisfactory**
U	**Unsatisfactory**
UW	**Unofficial Withdrawal**
W	**Withdrawal:** Does not affect GPA calculation
WP	**Withdrawal Passing:** Does not affect GPA calculation
WF	**Withdrawal Failing:** Does not affect GPA calculation
	Blank: If no grade is reported after a course, none was available at the time the transcript was prepared.

Examination Grades

H	Honors Quality
P*	High Pass
P	Pass

Grade Point Average: Cumulative G.P.A. is calculated by dividing total quality points earned by quality hours attempted. For details visit the Office of the University Registrar website: http://registrar.uchicago.edu.

6. Academic Status and Program of Study: The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment at the beginning of the transcript or chronologically by quarter. The definition of academic statuses follows:

7. Doctoral Residence Status: Effective Summer 2016, the academic records of students in programs leading to the degree of Doctor of Philosophy reflect a single doctoral registration status referred to by the year of study (e.g. D01, D02, D03). Students entering a PhD program Summer 2016 or later will be subject to a University-wide 9-year limit on registration. Students who entered a PhD program prior to Summer 2016 will continue to be allowed to register for up to 12 years from matriculation.

Scholastic Residence: the first two years of study beyond the baccalaureate degree. (Revised Summer 2000 to include the first four years of doctoral study. Discontinued Summer 2016)
Research Residence: the third and fourth years of doctoral study beyond the baccalaureate degree. (Discontinued Summer 2000.)
Advanced Residence: the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 10 years following admission for the School of Social Service Administration doctoral program and 12 years following admission to all other doctoral programs. Discontinued Summer 2016.)
Active File Status: a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000.)
Doctoral Leave of Absence: the period during which a student suspends work toward the Ph.D. and expects to resume work following a maximum of one academic year.
Extended Residence: the period following the conclusion of Advanced Residence. (Discontinued Summer 2013.)

Doctoral students are considered full-time students except when enrolled in Active File or Extended Residence status, or when permitted to complete the Doctoral Residence requirement on a half-time basis.

Students whose doctoral research requires residence away from the University register *Pro Forma*. *Pro Forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence. Time enrolled Pro Forma does not extend the maximum year limit on registration.

8. Law School Transcript Key: The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+)
0.5%
High Honors (180.5+)(pre-2002 180+)
7.2%
Honors (179+)(pre-2002 178+)
22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P** indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

* next to a course title indicates fulfillment of one of two substantial writing requirements. (Discontinued for Spring 2011 graduating class.)

See 5 for Law School grading system.

9. FERPA Re-Disclosure Notice: In accordance with U.S.C. 438(6)(4)(8)(The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student.

Office of the University Registrar
University of Chicago
1427 E. 60th Street
Chicago, IL 60637
773.702.7891

For an online version including updates to this information, visit the Office of the University Registrar website:
http://registrar.uchicago.edu.

Revised 09/2016

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THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

GWid : G36193931
Date of Birth: 06-FEB

Date Issued: 10-JUL-2022

Record of: Katherine R Ryan

Page: 1

Student Level: Law
Admit Term: Fall 2021

Issued To: KATHERINE RYAN
KRYAN7@GWU.EDU

REFNUM:78706102

Current College(s):Law School
Current Major(s): Law

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
GEORGE WASHINGTON UNIVERSITY CREDIT:			
Fall 2021			
Law School			
Law			
LAW 6202	Contracts Swaine	4.00	A-
LAW 6206	Torts Turley	4.00	A
LAW 6212	Civil Procedure Colby	4.00	A-
LAW 6216	Fundamentals Of Lawyering I Mcdonough	3.00	A
Ehrs	15.00 GPA-Hrs 15.00 GPA 3.822		
CUM	15.00 GPA-Hrs 15.00 GPA 3.822		
GEORGE WASHINGTON SCHOLAR			
TOP 1%-15% OF THE CLASS TO DATE			
Spring 2022			
Law School			
Law			
LAW 6208	Property Kieff	4.00	A-
LAW 6209	Legislation And Regulation Schwartz	3.00	A
LAW 6210	Criminal Law Weisburd	3.00	A
LAW 6214	Constitutional Law I Cheh	3.00	B+
LAW 6217	Fundamentals Of Lawyering II Mcdonough	3.00	A
Ehrs	16.00 GPA-Hrs 16.00 GPA 3.792		
CUM	31.00 GPA-Hrs 31.00 GPA 3.806		
Good Standing			
DEAN'S RECOGNITION FOR PROFESSIONAL DEVELOPMENT			
GEORGE WASHINGTON SCHOLAR			
TOP 1%-15% OF THE CLASS TO DATE			
Fall 2022			
Law School			
Law			
LAW 6250	Corporations On	4.00	----------
LAW 6360	Criminal Procedure	3.00	----------
LAW 6471	Patent Law	3.00	----------
LAW 6472	Copyright Law	3.00	----------
LAW 6647	Alternative Dispute Resolution	2.00	----------
	Credits In Progress:	15.00	

********** CONTINUED ON NEXT COLUMN **********

SUBJ NO	COURSE TITLE	CRDT	GRD PTS

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	31.00	31.00	118.00	3.806
OVERALL	31.00	31.00	118.00	3.806

########## END OF DOCUMENT ##########

Ed Edmundson
University Registrar

This transcript processed and delivered by Parchment

Office of the Registrar
THE GEORGE WASHINGTON UNIVERSITY
Washington, DC 20052

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DESIGNATION OF CREDIT

All courses are taught in semester hours.

TRANSFER CREDIT

Transfer courses listed on your transcript are bonafide courses and are assigned as advanced standing. However, whether or not these courses fulfill degree requirements is determined by individual school criteria. The notation of TR indicates credit accepted from a postsecondary institution or awarded by AP/IB exam.

EXPLANATION OF COURSE NUMBERING SYSTEM

All colleges and schools beginning Fall 2010 semester:

1000 to 1999	Primarily introductory undergraduate courses.
2000 to 4999	Advanced undergraduate courses that can also be taken for graduate credit with permission and additional work.
5000 to 5999	Special courses or part of special programs available to all students as part of ongoing curriculum innovation.
6000 to 6999	For master's, doctoral, and professional-level students; open to advanced undergraduate students with approval of the instructors and the dean or advising office.
8000 to 8999	For master's, doctoral, and professional-level students.

All colleges and schools except the Law School, the School of Medicine and Health Sciences, and the School of Public Health and Health Services before Fall 2010 semester:

001 to 100	Designed for freshman and sophomore students. Open to juniors and seniors with approval. Used by graduate students to make up undergraduate prerequisites. Not for graduate credit.
101 to 200	Designed for junior and senior students. With appropriate approval, specified courses may be taken for graduate credit by completing additional work.
201 to 300	Primarily for graduate students. Open to qualified seniors with approval of instructor and department chair. In School of Business, open only to seniors with a GPA of 3.00 or better as well as approval of department chair and dean.
301 to 400	Graduate School of Education and Human Development, School of Engineering and Applied Science, and Elliott School of International Affairs – Designed primarily for graduate students. Columbian College of Arts and Sciences – Limited to graduate students, primarily for doctoral students. School of Business – Limited to doctoral students.
700s	The 700 series is an ongoing program of curriculum innovation. The series includes courses taught by distinguished University Professors.
801	This number designates Dean's Seminar courses.

The Law School

Before June 1, 1968:

100 to 200	Required courses for first-year students.
201 to 300	Required and elective courses for Bachelor of Laws or Juris Doctor curriculum. Open to master's candidates with approval.
301 to 400	Advanced courses. Primarily for master's candidates. Open to LL.B or J.D. candidates with approval.

After June 1, 1968 through Summer 2010 semester:

201 to 299	Required courses for J.D. candidates.
300 to 499	Designed for second- and third-year J.D. candidates. Open to master's candidates only with special permission.
500 to 850	Designed for advanced law degree students. Open to J.D. candidates only with special permission.

School of Medicine and Health Sciences and
School of Public Health and Health Services before Fall 2010 semester:

001 to 200	Designed for students in undergraduate programs.
201 to 800	Designed for M.D., health sciences, public health, health services, exercise science and other graduate degree candidates in the basic sciences.

CORCORAN COLLEGE OF ART + DESIGN

The George Washington University merged with the Corcoran College of Art + Design, effective August 21, 2014. For the pre-merger Corcoran transcript key, please visit http://go.gwu.edu/corcorantranscriptkey

THE CONSORTIUM OF UNIVERSITIES OF THE WASHINGTON METROPOLITAN AREA

Courses taken through the Consortium are recorded using the visited institutions' department symbol and course number in the first positions of the title field. The visited institution is denoted with one of the following GW abbreviations.

AU	American University	MMU	Marymount University
CORC	Corcoran College of Art & Design	MV	Mount Vernon College
		NVCC	Northern Virginia Community College
CU	Catholic University of America	PGCC	Prince George's Community College
GC	Gallaudet University	SEU	Southeastern University
GU	Georgetown University	TC	Trinity Washington University
GL	Georgetown Law Center	USU	Uniformed Services University of the Health Sciences
GMU	George Mason University		
HU	Howard University	UDC	University of the District of Columbia
MC	Montgomery College	UMD	University of Maryland

GRADING SYSTEMS

Undergraduate Grading System

A, Excellent; *B*, Good; *C*, Satisfactory; *D*, Low Pass; *F*, Fail; *I*, Incomplete; *IPG*, In Progress; *W*, Authorized Withdrawal; *Z*, Unauthorized Withdrawal; *P*, Pass; *NP*, No Pass; *AU*, Audit. When a grade is assigned to a course that was originally assigned a grade of *I*, the *I* is replaced by the final grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.

Effective Fall 2011: The grading symbol RP indicates the class was repeated under Academic Forgiveness.

Effective Fall 2003: The grading symbol R indicates need to repeat course.

Prior to Summer 1992: When a grade is assigned to a course that was originally assigned a grade of *I*, the grade is replaced with *I'* and the grade.

Effective Fall 1987: The following grading symbols were added: *A-, B+, B-, C+, C-, D+, D-*.

Effective Summer 1980: The grading symbols: *P*, Pass, and *NP*, No Pass, replace *CR*, Credit, and *NC*, No Credit.

Graduate Grading System

(Excludes Law and M.D. programs.) *A*, Excellent; *B*, Good; *C*, Minimum Pass; *F*, Failure; *I*, Incomplete; *IPG*, In Progress; *CR*, Credit; *W*, Authorized Withdrawal; *Z*, Unauthorized Withdrawal; *AU*, Audit. When a grade is assigned to a course that was originally assigned a grade of *I*, the grade is replaced with *I* and the grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.

Effective Fall 1994: The following grading symbols were added: *A-, B+, B-, C+, C-* grades on the graduate level.

Law Grading System

A+, A, A-, Excellent; *B+, B, B-*, Good; *C+, C, C-*, Passing; *D*, Minimum Pass; *F*, Failure; *CR*, Credit; *NC*, No Credit; *I*, Incomplete. When a grade is assigned to a course that was originally assigned a grade of *I*, the grade is replaced with *I* and the grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.

M.D. Program Grading System

H, Honors; *HP*, High Pass; *P*, Pass; *F*, Failure; *IP*, In Progress; *I*, Incomplete; *CN*, Conditional; *W*, Withdrawal; *X*, Exempt, *CN/P*, Conditional converted to Pass; *CN/F*, Conditional converted to Failure. Through Summer 2014 the *I* was replaced with *I* and the final grade.

For historical information not included in the transcript key, please visit http://www.gwu.edu/transcriptkey

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Diane P. Wood
Senior Lecturer in Law
The University of Chicago Law School
1111 E. 60th Street
Chicago, IL 60637

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to write this letter of recommendation for Katherine Ryan, who was a student in my Judicial Federalism seminar during the Winter Quarter of 2023 at the University of Chicago Law School. My observation of both her oral and written contributions to the seminar convince me that Katherine will make an outstanding law clerk.

The seminar was designed to explore the many ways in which we make federalism work in the courts. It begins with a look at the original decision in the Constitution to allow Congress to decide whether to have a full-blown system of federal courts. We then go on to consider jurisdictional doctrines, allocation devices such as the Rooker-Feldman doctrine, inter-system full faith and credit, abstention doctrines, and anti-injunction statutes. From there, we turn to substantive rules, primarily the Erie doctrine and the section 2254 version of habeas corpus. Last, we look at other systems, including state courts, tribal courts, and the courts of the European Union, to see what insight they provide.

Katherine's particular interest is in the last of those topics: how does the EU operate with a severely limited number of EU-level courts (just the Court of Justice, the General Court, and a couple of specialized tribunals), and how does it rely instead on the courts of the Member States to enforce EU law? Central to its system is a sort of reverse certification, pursuant to which a Member State court may (and sometimes must) ask the Court of Justice to answer a particular question of EU law. Katherine's upcoming fellowship at the British Institute of International and Comparative Law, where she will be working on the unraveling of the UK's now-terminated membership in the European Union, will touch on all these questions.

This is the topic Katherine has been exploring in her paper for the seminar. While the paper is not complete yet, I have seen enough of her work and have had enough discussions with her about it to know that it will be an excellent contribution to this literature. Most importantly, this comparative perspective allows one to take a fresh look at the policy choices we in the United States have made. With more clarity about our goals and mechanisms, we can take the right steps to achieve them more effectively.

I should add finally that Katherine brings a sophisticated knowledge of the financial world to her work. Her B.S. in Accounting, summa cum laude, will be of great help in a clerkship as she tackles securities issues, corporate law, various kinds of financial frauds, bankruptcy, and other such cases. She is also no stranger to litigation, having spent the summer of 2022 as an intern at the Civil Division of the U.S. Department of Justice, in its aviation, space, and admiralty section. In short, she has already accumulated a wide range of expertise that would be of great value in anyone's chambers. She is also someone who is widely liked and admired by her peers. She accomplished the transition from George Washington University Law School to the University of Chicago Law School without missing a beat; she quickly became the Managing Editor of the Chicago Journal of International Law. It is often hard for transfer students to become involved immediately in journals, moot court, and similar activities, but Katherine did it.

Please let me know if I may be of any further assistance. As I said at the outset, Katherine has my enthusiastic recommendation.

Yours truly,

Diane P. Wood

Diane Wood - diane_wood@ca7.uscourts.gov

Sheri H. Lewis
Director of the D'Angelo Law Library
D'Angelo Law Library
1121 East 60th Street | Chicago, IL 60637
phone: 773-702-9614 | fax: 773-702-2889
e-mail: shl@uchicago.edu

June 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Katherine Ryan for a clerkship with you. Katherine is an outstanding student with a curious and analytical mind. It has been a pleasure to work with her at UChicago. I am sure that she would be an excellent law clerk.

I first met Katherine when she was in my Advanced Legal Research (ALR) course in the autumn 2022 quarter. ALR is a seminar class at the University of Chicago; it is limited to twenty-five students with an enrollment preference for third-year students. The course attracts self-motivated students interested in developing practical skills, particularly improving their effectiveness and efficiency as legal researchers. Katherine was one of a few second-years in last year's course.

Katherine was a terrific student, and her work was exceptional throughout the quarter. Her final paper was particularly noteworthy. Instead of an exam, students submit a comprehensive research paper on a selected legal topic. To complete the assignment, students thoroughly research a legal area or issue, analyze their findings at every step, and document their results and recommendations in a written product. Katherine's paper addressed the application of the "full and equal enjoyment" provision in Title III of the Americans with Disabilities Act. It was a well-written paper, excellent in its analysis, and among the best submitted in the course. I am impressed when a student's paper goes beyond the research parameters of their project and considers the real-world implications of a legal issue. Katherine's paper was unique in that regard.

I also have had an opportunity to get to know Katherine outside of class; she is delightful and has an impressive legal mind. Katherine is hard-working and a self-starter who takes the initiative and seeks guidance to ensure her understanding of an issue is sound and that her work on it is accurate and thorough. Katherine also is pleasant, courteous, and sincere, and I believe she would be a valuable and welcome member of your chambers' staff.

Based on my knowledge of her intelligence, research skill, and personal qualities, I strongly recommend Katherine for a law clerk position in your Court.

Very truly yours,
Sheri H. Lewis

Brooke Ellinwood McDonough
Associate Professor, Fundamentals of Lawyering
The George Washington University Law School
2000 H Street NW, Washington, DC 20052
(202) 288-2376
bellinwood@law.gwu.edu

June 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write this letter to enthusiastically recommend Katherine Ryan for a judicial clerkship. Katherine is an exceptional student whose character, self-initiative, and dedication to professional development ensure that she will also be an exceptional attorney. Based on my experience as an attorney and professor, I have no doubt Katherine will be an excellent law clerk and, indeed, an asset to any employer who hires her.

As a professor in the Fundamentals of Lawyering program at George Washington University's School of Law, I had the pleasure of working with Katherine during her entire first year of law school. My class is a required six-credit, full-year course. Katherine's section was comprised of sixteen students and met for three hours weekly. In this small group setting, I was able to get to know Katherine well. Katherine is a very skilled writer. Coupled with her excellent analytical skills and research ability, she received one of the top grades in my class in both the first and second semesters. In addition to these academic strengths, Katherine showed remarkable drive and self-initiative. Throughout both semesters, Katherine consistently worked hard to improve by meeting regularly with the Law School Writing Center. She did not see the achievement of a top score as her goal; she instead valued learning through and improving from the writing process. Katherine also went out of her way to receive feedback from me outside of class. Katherine frequently attended my office hours. When we met outside of class, Katherine was interested in learning not just about my class, but about different types of law practice and how to develop qualities that would ensure satisfaction and success in her future legal practice.

Finally, Katherine is simply an engaging and nice person. We both grew up in small towns on the East Coast and inherited a love of reading and history from our fathers. Katherine and I enjoyed discussing road trips to all the Revolutionary War memorials on the East Coast, and evenings spent watching the History Channel.

On a personal level, I was saddened when GW lost Katherine to the University of Chicago as I had looked forward to working with her throughout her time at GW. Fortunately, Katherine has kept in touch this year and I have enjoyed watching her continue to succeed and grow at the University of Chicago. I am confident she will be an excellent attorney and law clerk.

If you have any questions regarding my recommendation, please do not hesitate to contact me.

Very truly yours,
Brooke Ellinwood McDonough

TO: Cyrus Branch

FROM: Fall Associate 1131

RE: Books & Brews Salem LLC – Failure to Accommodate Concern

QUESTIONS PRESENTED

1. Under the ADA, is Jayde Ramirez's dog Sasha a service animal when she has been trained to bark in a way that interrupts the anxiety attacks that Ramirez experiences due to PTSD?
2. Under the ADA, did the Black Cat Magic Café discriminate against Ramirez when they failed to modify their procedures to accommodate Sasha at their beer and music festival?

BRIEF ANSWERS

1. Likely yes. Under the ADA, a service animal is any dog individually trained to perform a specific task that directly benefits an individual with a disability. A task directly benefits an individual with a disability if it ameliorates a symptom of their disability and is performed in response to a specific trigger. In this case, Sasha's barking interrupts the anxiety attacks that Ramirez experiences as a symptom of her PTSD. This barking is performed in response to triggers that manifest during the anxiety attacks. Therefore, Sasha is likely a service animal.
2. Likely yes. Under the ADA, a place of public accommodation discriminates against an individual with a disability when it fails to make reasonable modifications that are necessary to accommodate them. A modification is necessary when existing practices fail to provide full and equal enjoyment. To determine if a modification is reasonable, courts assess its associated costs, administrative burdens, and threats to health and safety. Here, Ramirez's requests were intended to modify practices that prevented her from enjoying entertainment and amenities offered to non-disabled patrons. These modifications were inexpensive,

unlikely to disrupt festival operations, and would not threaten the health or safety of others. Therefore, the Black Cat Magic Café likely discriminated against Ramirez.

STATEMENT OF FACTS

Books & Brews Salem LLC is the parent company of Black Cat Magic Café (the Café), a pop-up venue located in Salem, Oregon. R. at 8. During a beer and music festival at the Café, Jayde Ramirez (Ramirez) and her dog Sasha tried to enter the event tent but were turned away by the host, Ronald Betts (Betts), and manager, Emma Yousuf (Yousuf). *Id.* at 2.

Ramirez suffers from PTSD. *Id.* at 1. Her disability causes her to experience debilitating anxiety attacks. *Id*. Approximately one year ago, Ramirez adopted Sasha, a 140-pound Newfoundland, from the Can Go Dogs Training School. *Id.* at 11. At the time of her adoption, Sasha had been trained to recognize when her human partner was experiencing anxiety and would loudly and repeatedly bark in response to that recognition. *Id.* at 10. After adopting Sasha, Ramirez continued to train her to perform this task. *Id.* at 1. Sasha's barking helps Ramirez identify and avoid the stressful situations that cause her anxiety attacks. *Id*. According to Ramirez, Sasha is healthy and has no history of biting or aggressive behavior. *Id.* at 2.

On the day of the festival, all tables inside the venue were occupied when Ramirez and Sasha arrived, except for one directly next to a food truck. Transcript at 1. Ramirez requested to be seated at that table, but Betts refused, noting that Sasha might trip the servers, jump on the food, or create a mess that the festival's limited staff did not have the capacity to clean. *Id*. Betts offered the picnic tables outside the tent, but Ramirez declined, noting that she would not be able to view the river, stage, or sunset. *Id*.

After requesting to speak to Yousuf, Ramirez asked to sit on the grassy area in front of the festival stage. *Id.* at 2. Yousuf accepted this proposal, but noted that food would not be served there, and once the show began Ramirez would have to leave. *Id*. Ramirez declined and suggested that Betts move other guests to the open table in front of the food truck so that she could be seated away from it. *Id*. Betts denied this request, alleging that Sasha was "banging into people," and "licking things." *Id*. During these interactions, Betts also noted that Sasha was "gigantic, disgusting," and getting "drool and hair everywhere." *Id.* at 1. Regardless of this, adults and children gathered to pet her. R. at 13.

Betts then requested Sasha's paperwork, claimed that Ramirez was lying about her disability, and pointed to a paraplegic patron wearing a Marine Corps t-shirt to illustrate that, "only true heroes deserve special treatment." Transcript at 2. Sasha began to bark very loudly, and Betts requested that Ramirez remove her from the premises. *Id.* at 3. One patron who was petting Sasha voiced his objection to this request. R. at 13. While some were distracted from the event by Sasha's barking, no complaints were voiced. *Id.* at 1-13; Transcript at 1-3.

According to Ramirez, the sight of the paraplegic patron triggered an anxiety attack that caused her to leave the venue. R. at 2. One week later, Ramirez wrote a letter to the Café in which she alleged that they violated her rights as a disabled person, demanded payment of $50,000 within 30 days, and threatened to sue the Café if they failed to comply. *Id.* at 1.

DISCUSSION

I. SASHA IS LIKELY A SERVICE ANIMAL BECAUSE SHE PERFORMS A SPECIFIC TASK THAT DIRECTLY BENEFITS AN INDIVIDUAL WITH A DISABILITY, AND THE CAFÉ LIKELY DISCRIMINATED AGAINST RAMIREZ BECAUSE THEY REFUSED TO MAKE REASONABLE MODIFICATIONS THAT WERE NECESSARY TO ACCOMMODATE HER.

Under Title III of the ADA, no individual shall be discriminated against due to disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. 42 U.S.C. § 12182. To establish a claim for failure to accommodate under Title III, a plaintiff must show that, "(1) [s]he is disabled as defined by the ADA; (2) the defendant is a private entity that owns, leases, or operates a place of public accommodation; (3) the defendant employed a discriminatory policy or practice; and (4) the defendant discriminated against the plaintiff based on the plaintiff's disability by (i) failing to make a requested reasonable modification that was (ii) necessary to accommodate the plaintiff's disability." *Fortyune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1081 (9th Cir. 2004).

It is undisputed that Ramirez is disabled per the ADA, the Café is a private entity that operates a place of public accommodation, and a discriminatory practice was employed. R. at 1-13; Transcript at 1-3. Thus, to successfully bring a failure to accommodate claim against the Café, Ramirez must demonstrate that they discriminated against her by refusing to make a requested reasonable modification that was necessary to accommodate her disability. *Fortyune,* 364 F.3d at 1081. Furthermore, because Ramirez has alleged that Sasha is her service animal, this memorandum will address the validity of that claim. R. at 1.

Part A discusses why Sasha is likely a service animal because she has been trained to perform a specific task that directly benefits Ramirez's disability. Part B discusses why the Café likely discriminated against Ramirez by failing to make requested modifications that were (i) necessary, and (ii) reasonable.

A. Sasha Is Likely a Service Animal Because She Has Been Trained to Perform a Specific Task That Directly Benefits Ramirez's Disability.

Under the ADA, a service animal is any dog individually trained to perform a specific task that directly benefits an individual with a disability. 28 C.F.R. § 36.104 (2021); *C.L. v. Del Amo Hosp., Inc.*, 992 F.3d 901, 910 (9th Cir. 2021). To promote equitable access and advance the goals of the ADA, the Ninth Circuit has held that a service animal's training may be conducted by their owner and does not require formal certification. *Id*.

A task directly benefits an individual's disability if its performance ameliorates a symptom of their disability. *Davis v. Ma*, 848 F. Supp. 2d 1105, 1116 (C.D. Cal. 2012). A task ameliorates a symptom if it interrupts or prevents its occurrence, and can be accomplished by barking, jumping, pawing, or licking. *See K.D. v. Villa Grove Cmty. Unit Sch. Dist. No. 302 Bd. of Educ.*, 936 N.E.2d 690, 692 (Ill. App. Ct. 2010) (affirming that a dog trained to bark during the night if its owner, a young boy with autism, left his bed ameliorated a symptom of his autism because it allowed his parents to interrupt his inadvertent attempts to run away); *Sadler v. Fred Meyer Stores, Inc.,* U.S. Dist. LEXIS 172562 (D. Or. 2018) (stating that a dog trained to jump on, paw at, and lick its owner, a woman who suffered from extreme anxiety, when she was having an anxiety attack ameliorated her symptoms because it prevented escalation by reminding her to calm down). While the trained task can be an ordinary behavior expected of a dog, such as barking or licking, it should be unique in that it is performed in response to triggers related to the owner's disability. *See C.L.*, 992 F.3d at 911 (stating that a hypothetical dog trained to sit in its owner's lap in a particular position ceased to engage in the ordinary behavior of a dog because it strictly sat that way in response to triggers related to the owner's disability).

In the present case, as in *C.L.*, the fact that Sasha's training was conducted by Ramirez and is not substantiated by formal certification is irrelevant. R. at 1. Instead, a court would consider whether Sasha's barking ameliorates the anxiety attacks that Ramirez experiences as a

symptom of PTSD by interrupting or preventing their occurrence. As in *K.D.*, where the court found that a service dog's barking ameliorated a symptom of a boy's autism by interrupting his inadvertent attempts to run away during the night, Sasha's barking ameliorates a symptom of Ramirez's PTSD by reminding her to leave the stressful situations that cause her anxiety attacks. *Id*. While Sasha's barking may seem less extensive than the jumping, pawing, and licking performed by the dog in *Sadler,* the purpose of these tasks was to prevent the owner's anxiety from escalating by reminding her to calm down, just as the purpose of Sasha's barking is to prevent Ramirez's anxiety from worsening by reminding her to leave stressful situations. *Id*.

Another relevant consideration is whether Sasha's barking is performed in response to triggers related to Ramirez's disability. As in *C.L.*, where the court noted that a hypothetical dog that was trained to sit in its owner's lap in a particular position ceased to engage in ordinary behavior because it strictly sat that way in response to triggers related to its owner's disability, Sasha's barking exceeds behavior that dogs naturally engage in because it is consistently performed in response to triggers related to Ramirez's anxiety attacks. *Id.* at 11. This is supported by the fact that Sasha only began barking after Betts pointed to a paraplegic veteran, which corresponds with the moment that Ramirez allegedly began suffering from an anxiety attack. *Id.* at 2; Transcript at 3.

Because Sasha is trained to bark in a way that ameliorates Ramirez's anxiety attacks and performs this task in response to triggers related to these attacks, she is likely a service animal.

B. The Café Likely Discriminated Against Ramirez Because They Failed to Make Requested Modifications That Were Necessary and Reasonable.

As previously noted, to establish that the Café discriminated against her on the basis of disability, Ramirez must show that they failed to make requested modifications that were both

reasonable and necessary. Subpart (i) will discuss why the modifications requested were necessary, and subpart (ii) will discuss why they were reasonable.

i. The modifications requested were necessary because the Café's existing practices failed to provide Ramirez with full and equal enjoyment of their facilities.

A requested modification is necessary to accommodate a disabled individual if current practices fail to provide them with full and equal enjoyment of a public accommodation's facilities. *Baughman v. Walt Disney World Co.*, 685 F.3d 1131, 1132 (9th Cir. 2012); 42 U.S.C. § 12182. Full and equal enjoyment guarantees more than mere access; it requires that disabled and non-disabled individuals be provided functionally equivalent experiences. *Celano v. Marriott Int'l, Inc.*, 242 F.R.D. 2, 38 (N.D. Cal. 2008). To determine if an experience is functionally equivalent, courts examine the experience from the point of view of non-disabled parties and assess whether a like experience is provided to their disabled counterparts. *See Or. Paralyzed Veterans of Am. v. Regal Cinemas, Inc.*, 339 F.3d 1126, 1137 (9th Cir. 2003) (finding that a movie theater failed to provide a functionally equivalent experience when non-disabled patrons had a variety of comfortable viewing locations to choose from while wheelchair users had to sit in the theater's first row and uncomfortably crane their necks to view the screen).

An experience will not be considered "like" if it is a mere substitute that fails to provide benefits inherent to visiting the facility. *See Antoninetti v. Chipotle Mexican Grill, Inc.*, 614 F.3d 971, 979 (9th Cir. 2010) (holding that Chipotle's burrito assembly process for wheelchair users, which included assembling the food at a table in the seating area, did not provide a like experience because it was a substitute that lacked the personal participation in ingredient selection that is a benefit inherent to ordering from Chipotle). Courts have held that these benefits can include social interaction with other patrons. *See Kalani v. Starbucks Corp.*, 117 F. Supp. 3d 1078, 1087 (N.D. Cal. 2015) (stating that a Starbuck's wheelchair seating selection,

which required wheelchair users to sit facing a wall with their backs to the interior of the store, hindered their social interaction with other patrons, a benefit inherent to visiting Starbucks).

In this case, it is likely that the modifications requested by Ramirez were necessary because the Café's current practices failed to provide her with a functionally equivalent experience relative to non-disabled patrons. As in *Regal Cinemas,* where the court found that a movie theater's accommodations failed to provide an equivalent experience to wheelchair users who were forced to crane their necks to view a movie screen while non-disabled patrons had a variety of comfortable viewing locations, Betts' suggestion that Ramirez sit outside the tent at a picnic table would fail to provide her with a functionally equivalent experience because she would be unable to enjoy the river, stage, and sunset that non-disabled patrons could view without obstruction. Transcript at 1. Furthermore, Yousef's concession to allow Ramirez to sit on the grassy area in front of the stage would fail to provide a functionally equivalent experience because Ramirez would be unable to enjoy the food service provided to patrons inside the tent, and she would be required to leave once the area became crowded. *Id.* at 2.

A court might also determine that these accommodations offered by the Café were not "like" experiences because they were mere substitutes that failed to provide the benefits inherent to attending a beer and music festival. As in *Antoninetti*, where the court found that Chipotle's burrito assembly process did not provide a like experience for wheelchair users because it was a substitute that lacked the benefit of personal participation inherent to the Chipotle experience, requiring Ramirez to sit at the picnic tables or on the grassy area were substitutes to sitting inside the tent that deprived her of the benefits inherent to a beer and music festival, such as ordering food and alcohol and watching a live performance. *Id.* 1-2. Moreover, the present situation is similar to *Kalani*, where the court found that requiring wheelchair users to sit facing a wall

deprived them of the inherent benefit of socialization enjoyed by non-disabled Starbucks patrons, because requiring Ramirez to sit at the picnic tables would likely isolate her from other festival attendees and fail to provide her with the social benefits inherent to the event. *Id.* at 1.

Because the accommodations offered to Ramirez deprived her of a functionally equivalent experience and amounted to mere substitutes that lacked the benefits inherent to attending a beer and music festival, the modifications that Ramirez requested were necessary.

ii. The modifications requested were reasonable because they were inexpensive, unlikely to disrupt festival operations, and would not threaten health or safety.

Determining if a modification is reasonable requires a case-by-case inquiry that considers, among other factors, the costs, disruptions to business operations, and health and safety risks associated with the modification. *Baughman* 685 F.3d at 1136; *Johnson v. Gambrinus Co.*, 116 F.3d 1052, 1065 (5th Cir. 1997). These factors should be measured in a way that provides service animals with the broadest feasible access. *Lentini v. Cal. Ctr. for the Arts*, 370 F.3d 837, 841 (9th Cir. 2004).

Regarding costs, the Ninth Circuit has held that the price of a modification should not be disproportionate to its benefit to disabled patrons. *See Indep. Living Res. Ctr. S.F. v. Lyft, Inc.*, U.S. Dist. LEXIS (N.D. Cal. 2020) (holding that it would be unwarranted to force Lyft to implement a wheelchair accessible vehicle rideshare program because the program would require Lyft to pay $1,200 per ride while serving, at most, 125 riders per month). In scoping the bounds of a disproportionate cost, courts hold that if the cost is close to zero dollars, it will be considered proportionate. *See Staron v. McDonald's Corp,* 51 F.3d 353, 358 (2d Cir. 1995) (finding that the cost that McDonalds would incur by enforcing a no-smoking policy on behalf of patrons with smoke allergies would not be disproportionate because it would be close to zero dollars).

In terms of business operations, not all disruptions will make a modification unreasonable; courts have tolerated those that do not elicit complaints from other patrons. *See Lentini* 370 F.3d at 844 (affirming a district court decision requiring a performing arts center to accommodate occasional disruptive "yipping" from a disabled patron's service dog because, among other things, the noise did not cause other patrons to complain). Courts have also permitted disruptions if they occur with limited frequency. *See Fortyune*, 364 F.3d at 1084 (finding that requiring a movie theater to ensure that non-disabled patrons vacate handicapped companion seats when requested to do so would not create an undue disruption because, per the movie theater's admissions, such events were exceedingly uncommon).

When considering safety and health impacts, concerns must be based on actual risks rather than speculation. *See Baughman*, 685 F.3d at 1137 (finding that Disney World was permitted to make a policy decision that prevented a disabled patron from using a Segway in their park, provided that their decision was founded on actual safety risks, such as pedestrian traffic volume, not speculation). In the context of venues that serve alcohol, the Fifth Circuit has held that service animals do not pose a health risk when there are areas of the venue where the animal can be accommodated without potential contamination. *See Johnson*, 116 F.3d at 1052 (holding that a guide dog did not pose a health risk at a brewery that provided public tours when there were areas of the brewery, such as a hospitality room where tour guests sampled beer, where the dog could be accommodated without the risk of contaminating alcohol).

In the present case, the costs associated with the modifications requested would likely be seen as reasonable. Unlike *Lyft,* where the court held that it would be unwarranted to require Lyft to implement a wheelchair rideshare program that would serve 125 riders per month and cost $1,200 per ride, it would be warranted to expect the Café to seat Ramirez next to the food truck

or move other guests, because doing so would allow her to enjoy the festival while costing the Café nothing. Transcript at 1-3. As in *Staron*, where the court reasoned that the cost that McDonalds would incur by enforcing no-smoking policies in their restaurants was proportionate because it would be close to zero dollars, the costs of Ramirez's requests are likely to be seen as proportionate because they too would be close to zero dollars. *Id*.

Furthermore, implementing the requests would not create an undue business disruption. As in *Lentini*, where the Ninth Circuit required a performing arts center to accommodate the occasional "yipping" from a disabled patron's service dog because other customers failed to complain, a court may hold that the Café should have accommodated Sasha's potentially disruptive barking because no festival patrons complained. R. at 1-13. Children were eager to play with her, and one patron objected when Betts requested that Ramirez remove her from the premises. R. at 13. While some patrons were distracted by her barking, none voiced complaints. *Id*. Also, as in *Fortyune*, where the court found that the burden of requiring that patrons vacate handicapped companion seats when requested would be within reason due to the infrequency of such requests, the burden of asking a table of seated customers to move next to the food truck would be within reason because it is unlikely that the Café would need to make such requests frequently, given the improbability that they are often visited by large service dogs with a proclivity for drooling and shedding. R at 11; Transcript at 1.

In addition, it is unlikely that Sasha posed any safety or health risks to other patrons. As in *Baughman*, where the court held that Disney World could deny the use of a Segway in their park if their decision was based on actual safety risks as opposed to speculation, Betts' failure to seat Sasha by the food truck would be permissible if his concerns about her tripping servers, jumping on food, or creating a mess were non-speculative. Transcript at 1. However, at the time

that he expressed these concerns, Sasha had not behaved in a way that would indicate such risks were probable, therefore these concerns were likely speculative. *Id.* While Betts noted that Sasha was "banging into people" and "licking things," when Ramirez asked him to move other patrons, these behaviors are unlikely to rise to the level of a real safety risk, especially given that Sasha is healthy and has no history of biting or aggressive behavior. R. at 2. Additional similarities can be drawn to *Johnson*, where the court held that a guide dog did not pose a health risk at a brewery when it could be accommodated in a beer sampling room without potential for contamination, because Sasha would not have posed a health risk at the festival had she been seated away from the food truck, safe from potential food and alcohol contamination, as Ramirez requested. Transcript at 2.

In light of their associated costs, disruptions to business operations, and health and safety risks, the modifications requested by Ramirez appear to be reasonable.

CONCLUSIONS AND RECOMMENDATIONS

As stated above, Sasha is likely a service animal under the ADA because she is individually trained to perform a specific task that directly benefits an individual with a disability. *C.L.*, 992 F.3d at 910; R. at 1-2. Furthermore, the Café likely discriminated against Ramirez because they failed to make requested modifications that were necessary and reasonable. *Fortyune*, 364 F.3d at 1081; Transcript at 1-3. For these reasons, Ramirez will likely be able to establish a claim for failure to accommodate under Title III of the ADA, and Books & Brews Salem LLC should attempt to settle this matter to avoid litigation.

As the parent company of the Café, Books & Brews Salem LLC should also take affirmative steps to prevent future discrimination by their staff. First, they should require all

employees to take a diversity, equity, and inclusion training. To be mindful of cost, they can use one of several free online courses.[1] Furthermore, they should update their policies to include ADA guidelines about questions that employees are legally permitted to ask patrons with service animals.[2] Finally, at future pop-up events they should require the food truck to park in their unused parking lot to mitigate concerns about food contamination, and hire one additional staff member at Marion County's $12.75 per hour minimum wage[3] to clean potential messes. *Id.* at 12. Such modifications will allow Books & Brews Salem LLC to continue to serve their clients without undue fear of future discrimination claims.

PLEDGE OF HONESTY

On my honor, I submit this work in good faith and pledge that I have neither given nor received improper aid in its completion. /s/ 1131

[1] *10 free online courses on diversity, equity, and inclusion to sign up for right now that will make you a better leader*, Business Insider, https://www.businessinsider.com/free-online-courses-diversity-equity-inclusion-2020-10 (last visited Nov. 30, 2021).
[2] *Service Animals*, ADA.gov, https://www.ada.gov/service_animals_2010.htm (last visited Nov. 30, 2021).
[3] *Oregon Minimum Wage*, Oregon Bureau of Labor and Industry, https://www.oregon.gov/boli/workers/pages/minimum-wage.aspx (last visited Nov. 30, 2021)

Applicant Details

First Name	**Connor**
Middle Initial	**O**
Last Name	**Sakati**
Citizenship Status	**U. S. Citizen**
Email Address	**cos10@duke.edu**
Address	**Address** Street **910 Constitution Drive** City **Duram** State/Territory **North Carolina** Zip **27705** Country **United States**
Contact Phone Number	**6036895889**

Applicant Education

BA/BS From	**Georgetown University**
Date of BA/BS	**May 2018**
JD/LLB From	**Duke University School of Law** **https://law.duke.edu/career/**
Date of JD/LLB	**May 15, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Alaska Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Meyer, Tim
meyer@law.duke.edu
919-613-7014
Roady, Steve
sroady@duke.edu
919-613-7061
Nowlin, Michelle
Nowlin@law.duke.edu
919-613-8502

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Connor Sakati
910 Constitution Drive, Apt. 812
Durham, NC 27705

The Honorable Judge Jamar K. Walker
United States District Court, Eastern District of Virginia
Norfolk, VA 23510

Dear Judge Walker,

I am applying to serve as your clerk for the 2024-25 term. I am a former Teach for America teacher, joint degree student at Duke Law School, and United States Army Reserve officer candidate. I aim to leverage my legal training to help shape rural development, natural resources, and energy law and policy. To that end, clerking would help me deepen my understanding of the litigation process while also broadly exposing me to new legal issues. Additionally, half my family lives scattered across Virginia, and my partner grew up in the state; I would greatly enjoy clerking near both my family and hers. I am most interested in a one-year clerkship.

My experience teaching and volunteering would make me an effective clerk in your chambers. As the only biology, ecology, and geology high school teacher in a rural school district, I managed over one hundred students (and the reams of paper) that came through my door each day while also independently developing a curriculum for each course. Additionally, as a *Guardian Ad Litem*, I made parental custody and social services recommendations for children in abuse, neglect, and dependency court. Moreover, while volunteering in wilderness emergency services, I have learned to operate under pressure.

Throughout graduate school, I focused on developing strong writing skills, learning to conduct scholarly research, and publishing my own work. Thus, I elected to write eight term papers during my second year of law school while also enrolling in writing-intensive seminars at the Sanford School of Public Policy. I even carried a copy of Ross Gruberman's *Point Made* through the Fort Knox mud and thunderstorms during a monthlong field training. These efforts bore fruit; last semester, the Alaska Law Review published my first paper; another is forthcoming as a chapter of an Environmental Law Institute report. Following recommendations from my professors, I have submitted two other papers for publication in law reviews.

Enclosed please find my resume, transcripts, and writing sample; letters of recommendation from Professors Timothy Meyer, Michelle Nowlin, and Stephen Roady will follow. Please contact me at either connor.sakati@duke.edu or 603-689-5889 if you have any questions regarding my application. Additionally, between July 15 and August 16 I am attending an Army field training at Fort Knox; I apologize in advance for any delayed responses during that time.

Thank you very much for your time and your consideration,

Connor Sakati

CONNOR SAKATI
910 Constitution Drive, Apt. 812, Durham NC 27705 | connor.sakati@duke.edu | 603-689-5889

EDUCATION

Duke University School of Law and Sanford School of Public Policy, Durham, NC
Juris Doctor, Master of Public Policy, Certificate in International Development Economics, expected May 2024
GPA: 3.67 (J.D.), 3.87 (M.P.P.)
Journal: Alaska Law Review, *Executive Board*, *Executive Development Editor*
Military: U.S. Army Reserve Officer's Training Corps (*Officer Candidate*, expected commissioning 2024)
Pro Bono: North Carolina Guardian *Ad Litem*, Innocence Project, Prison Water Quality Monitoring Project
Consulting: North Carolina Office of Rural Health (co-authored rural hospital payment reform report)
Leadership: Government and Public Service Society, *President*
Faculty Public Interest Law Committee, *Student Representative*
Law School Dean's Advisory Council, *Member*
Durham Literacy Center, *Board Member*
Publication: *Fishing in the Desert: Modernizing Alaskan Salmon Management to Protect Fisheries and Preserve Fishers' Livelihoods*, 40 Alaska Law Review 137–69 (2023)

Georgetown University School of Foreign Service, Washington, DC
Bachelor of Science in Foreign Service, Minor in French, *magna cum laude*, May 2018
GPA: 3.87
Honors*:* French, History, and Political Science National Honors Societies
Study Aboard*:* Science Po Paris Exchange Program, Paris, France, Fall 2016

EXPERIENCE

U.S. Department of Justice, **Environment and Natural Resources Division**, Denver, CO
Law Clerk, May 2023 – Present
Member of a case team litigating environmental enforcement actions involving multiple antipollution statutes. Researched procedural issues for multiparty civil litigation and novel applications of environmental law to internet companies. Additionally, I interned with the Environmental Crimes Section in 2017.

Alaska Attorney General's Office, Anchorage, AK
Law Clerk, May 2022 – July 2022
Assisted with environmental, criminal environmental enforcement, public agency law, and sex crimes cases. Independently researched, drafted, and edited motions to dismiss, discovery motions, and a response. Presented original legal research during client meetings and recommended legal strategies, including to the Attorney General.

U.S. Department of State, **International Narcotics and Law Enforcement Affairs**, Washington, DC
Graduate Intern, June 2021 – September 2021
Assisted a team designing and implementing judicial reform and rule of law programming. Authored briefings and talking points for officials, including the Deputy Assistant Secretary. Researched Balkan and Central Asian legal reform issues while helping to develop new programming concepts. Volunteered on Afghan evacuation task force.

Teach for America Appalachia (Harlan High School), Harlan, KY
High School Science Teacher, August 2018 – May 2020
One of two state-licensed science teachers in the school district. Independently taught over one hundred students and developed a standards-aligned curriculum for earth science, biology, and anatomy courses. Coached Boys and Girls Cross Country and Track teams, including a state-meet qualifying team.

Federal Bureau of Investigation, **Criminal Division**, Boston, MA
Honors Intern, June 2016 – August 2016
Assigned to a transnational organized crime task force. Supported active investigations by analyzing evidence and multisource intelligence, building presentations, and briefing Intelligence Analysts and Special Agents.

ADDITIONAL INFORMATION

Languages: French (Proficient), German (12 Credits), Turkish (12 Credits).

Activities and Interests: Orange County Technical Rescue Team Member (wilderness search and rescue, swift water rescue, flooding response). Former Ski Patroller. Avid Skier and Hiker.

DUKE UNIVERSITY - Unofficial Transcript

Name: **Connor Ossama Sakati** **6/9/2023**
Student ID: **2610434**

Academic Program History

Program: **Law School**
(*Status: Active in Program*)
Plan: **Law (JD)** *(Primary)*
Subplan:

Beginning of Law School Record

2021 Fall Term

Course		Description	Units Earned	Official Grade	Grading Basis
LAW	110	CIVIL PROCEDURE	4.500	4.0	GRD
LAW	130	CONTRACTS	4.500	3.3	GRD
LAW	160A	LEGAL ANLY/RESEARCH/WRIT	0.000	CR	CNC
LAW	180	TORTS	4.500	4.0	GRD

Term GPA: 3.766 Term Earned: 13.500

Cum GPA: 3.766 Cum Earned: 13.500

2022 Winter Term

Course		Description	Units Earned	Official Grade	Grading Basis
LAW	857	LAWYERING/EXECUTIVE BRANCH	0.500	CR	CNC
Course Topic:		**Reserved for 1Ls and LLMs**			
LAW	864	LAWYERING: INT'L DEVELOPMENT	0.500	CR	CNC

Term GPA: 0.000 Term Earned: 1.000

Cum GPA: 3.766 Cum Earned: 14.500

2022 Spring Term

Course		Description	Units Earned	Official Grade	Grading Basis
LAW	120	CONSTITUTIONAL LAW	4.500	3.2	GRD
LAW	140	CRIMINAL LAW	4.500	3.3	GRD
LAW	160B	LEGAL ANLY/RESEARCH/WRIT	4.000	3.3	GRD
LAW	170	PROPERTY	4.000	3.7	GRD

Term GPA: 3.367 Term Earned: 17.000

Cum GPA: 3.544 Cum Earned: 31.500

2022 Summer Term 2

Course		Description	Units Earned	Official Grade	Grading Basis
LAW	614	JD PROFESSIONAL DEVELOPMENT	0.000	CR	PFI

Term GPA: 0.000 Term Earned: 0.000

Cum GPA: 3.544 Cum Earned: 31.500

DUKE UNIVERSITY - Unofficial Transcript

Name: **Connor Ossama Sakati** **6/9/2023**
Student ID: **2610434**

2022 Fall Term

Course		Description	Units Earned	Official Grade	Grading Basis
LAW	218	COMPARATIVE LAW	3.000	4.0	GRD
LAW	368	NATURAL RESOURCES LAW	2.000	4.0	GRD
LAW	566	INTERNATL ENVIRONMENTAL LAW	2.000	4.0	GRD
LAW	582	NATIONAL SECURITY LAW	3.000	3.5	GRD
LAW	621	EXTERNSHIP	2.000	CR	CNC
LAW	621S	EXTERNSHIP SEMINAR	1.000	P	PHF
LAW	628	JD LEGAL WRITING	0.000		NOG
Course Topic:		**Track upper-level writing req.**			
LAW	647	US/CANADA MARINE LIFE GOVT RE	3.000	3.7	GRD
MILITSCI	91L	LEADERSHIP LABORATORY: FALL	0.000	P*	PFP
MILITSCI	301	TRNING MGMT/WARFIGHTING FNCTNS	0.000	A+*	GPN

Term GPA: 3.815 Term Earned: 16.000

Cum GPA: 3.625 Cum Earned: 47.500

2023 Spring Term

Course		Description	Units Earned	Official Grade	Grading Basis
LAW	200	ADMINISTRATIVE LAW	3.000	3.8	GRD
LAW	245	EVIDENCE	3.000	3.6	GRD
LAW	320	WATER RESOURCES LAW	2.000	4.3	GRD
LAW	361	INTERNATIONAL TRADE LAW	3.000	3.5	GRD
LAW	422	CRIMINAL TRIAL PRACTICE	3.000	3.9	GRD
LAW	604	AD HOC TUTORIAL (TOPICS)	1.000	CR	CNC
Course Topic:		**Election Law**			
LAW	640	INDEPENDENT RESEARCH	1.000	4.0	GRD
MILITSCI	92L	LEADERSHIP LABORATORY: SPRING	0.000	P*	PFP
MILITSCI	302S	APP LEADERSHIP/SMALL UNIT OPS	0.000	A+*	GPN

Term GPA: 3.800 Term Earned: 16.000

Cum GPA: 3.670 Cum Earned: 63.500

2023 Summer Term 2

Course		Description	Units Earned	Official Grade	Grading Basis
LAW	614	JD PROFESSIONAL DEVELOPMENT	0.000		PFI

Term GPA: 0.000 Term Earned: 0.000

Cum GPA: 3.670 Cum Earned: 63.500

Law School Career Earned

Cum GPA: 3.670 Cum Earned: 63.500

DUKE UNIVERSITY - Unofficial Transcript

Name: **Connor Ossama Sakati** **6/9/2023**
Student ID: **2610434**

Academic Program History

Program: **Public Policy**
(*Status: Active in Program*)
Plan: **Public Policy - Master's** *(Primary)*
Subplan:
Subplan: **International Development Policy** *Concentration*

Beginning of School of Public Policy Record

2020 Fall Term

Course		Description	Units Earned	Official Grade	Grading Basis
CONTPPS	1	COURSE CONTINUATION	0.000		NOG
PUBPOL	800	CAREER & PROF SKILL DEV	0.000	-	NOG
PUBPOL	803	POLICY ANALYSIS I	3.000	A-	GRD
PUBPOL	811D	MICROECO: POLICY APPL	3.000	A	GRD
PUBPOL	812	STATISTICS FOR POLICY MAKERS	3.000	A	GRD
PUBPOL	820	GLOBALIZATION/GOVERNANCE	3.000	A-	GRD
PUBPOL	890	SPECIAL TOPICS	3.000	A	GRD
Course Topic:		**INTERNATIONAL DEVELOPMENT**			
PUBPOL	890-1	INTRO SPECIAL TOPICS SKILLS	0.000	-	NOG
Course Topic:		**EXCEL FOUNDATIONS**			

Term GPA: 3.880 Term Earned: 15.000

Cum GPA: 3.880 Cum Earned: 15.000

2021 Spring Term

Course		Description	Units Earned	Official Grade	Grading Basis
PUBPOL	764	GOVERNANCE AND DEVELOPMENT	3.000	A	GRD
PUBPOL	778	FISC DECENTRAL/LOCAL GOVT FIN	3.000	A	GRD
PUBPOL	804	POLICY ANALYSIS II	3.000	B+	GRD
PUBPOL	813	QUANTITATIVE EVAL METH	3.000	A+	GRD
PUBPOL	830	SPECIAL TOPICS MODULE	1.500	A	GRD
Course Topic:		**MODERN CONSERVATISM & POLICY**			
PUBPOL	830	SPECIAL TOPICS MODULE	1.500	A	GRD
Course Topic:		**NC POLITICS & POLICY**			

Term GPA: 3.860 Term Earned: 15.000

Cum GPA: 3.870 Cum Earned: 30.000

2021 Summer Term 1

Course		Description	Units Earned	Official Grade	Grading Basis
PUBPOL	802	GRADUATE SUMMER INTERNSHIP	0.000	CR	CNC

Term GPA: 0.000 Term Earned: 0.000

Cum GPA: 3.870 Cum Earned: 30.000

DUKE UNIVERSITY - Unofficial Transcript

Name: **Connor Ossama Sakati** **6/9/2023**
Student ID: **2610434**

2023 Fall Term

Course		Description	Units Earned	Official Grade	Grading Basis
PUBPOL	790	SPECIAL TOPICS IN IDP	0.000		GRD
Course Topic:		**POLITICAL ECONOMY IN SSA & MN**			
PUBPOL	890	SPECIAL TOPICS	0.000		GRD
Course Topic:		**INTERNATIONAL POLITICAL ECO**			

Term GPA: 0.000 Term Earned: 0.000

Cum GPA: 3.870 Cum Earned: 30.000

School of Public Policy Career Earned

Cum GPA: 3.870 Cum Earned: 30.000

Record of: Connor Ossama Sakati
ID:: 828527878

GEORGETOWN UNIVERSITY
OFFICE OF THE UNIVERSITY REGISTRAR
WASHINGTON, D.C. 20057
(202)687-4020

Date of Birth: 12-Oct

Course Level: Undergraduate

High Schools Attended:
ALVIRNE HIGH SCHOOL
HUDSON NH

Degrees Awarded:
B.S. in Foreign Service May 19, 2018
School of Foreign Service
Major: International Politics
Minor: French
Concentration: International Security Studies
Degree GPA: 3.874
Honors: Magna Cum Laude

Transfer Credit:
Advanced Placement

Writing and Culture Seminar	3.00
Advanced French I	3.00
Adv French II: Contemp Cvlztn	3.00
US Political Systems	3.00
School Total:	12.00

Language Proficiency: French, Spring 2015
Entering Program:
School of Foreign Service
B.S. in Foreign Service
Major: International Affairs

Subj	Crs	Title	Crd	Grd	Pts	R
		Fall 2014				
ECON	002	Econ Principles Macro	3.00	A-	11.01	
FREN	151	Adv French Grammar & Writing	3.00	A	12.00	
HIST	007	Intro Early Hist: World I	3.00	A	12.00	
INAF	100	Prosem: Green Politics	3.00	A	12.00	
THEO	001	The Problem of God	3.00	B+	9.99	
		Second Honors				
Subj	**Crs**	**Title**	**Crd**	**Grd**	**Pts**	**R**
		Spring 2015				
ECON	001	Econ Principles Micro	3.00	B+	9.99	
FREN	161	Topics French Oral Proficiency	3.00	A	12.00	
FREN	250	Rdg Txts/Fr-Speak World:Cultur	3.00	A	12.00	
GOVT	060	International Relations	3.00	A-	11.01	
INAF	008	Map of the Modern World	1.00	S	0.00	
PHIL	099	Political & Social Thought	4.00	B+	13.32	
		Dean's List				

----------Continued on Next Column----------

Program Changed to:
Major: International Politics

Subj	Crs	Title	Crd	Grd	Pts	R
		Fall 2015				
ECON	244	International Finance	3.00	A	12.00	
FREN	371	19th Century Best Sellers	3.00	A-	11.01	
GOVT	040	Comparative Political Systems	3.00	A-	11.01	
GOVT	201	Analysis of Political Data I	3.00	A	12.00	
TURK	011	Intensive Beginning Turkish I	6.00	A	24.00	
		Second Honors				
Subj	**Crs**	**Title**	**Crd**	**Grd**	**Pts**	**R**
		Spring 2016				
FREN	294	French for Politics	3.00	A	12.00	
HIST	365	Society/Politics Modern Turkey	3.00	A	12.00	
INAF	366	Extractive Industries &Conflct	3.00	A	12.00	
JCIV	321	Hist of Peace-Making:Mid East	3.00	A-	11.01	
TURK	012	Intensive Beginning Turkish II	6.00	A	24.00	
		First Honors				
Subj	**Crs**	**Title**	**Crd**	**Grd**	**Pts**	**R**
		Fall 2016				
SCIENCES PO-PARIS INST. POL ST						
Histoire de la Construction Europeenne: Entre Crises et Relances			3.00	15,0		
La Geopolitique Depuis la fin de la Guerre Froide			3.00	14,0		
La Mondialisation des Relations Internationales au XXE Siecle			3.00	17,0		
Introduction a L'Ethique			3.00	16,5		
Commercialisation Internationale des Armements			3.00	13,5		
School Total:			15.00			
Subj	**Crs**	**Title**	**Crd**	**Grd**	**Pts**	**R**
		Spring 2017				
GERM	011	Intens Basic German	6.00	A	24.00	
HIST	108	Central Eurasia	3.00	A	12.00	
HIST	371	(In)tolerance in East Europe	3.00	A	12.00	
HIST	460	Imperialism in ME before WWI	3.00	A	12.00	
IPOL	375	Radicalization and Terrorism	3.00	A	12.00	
		First Honors				
Subj	**Crs**	**Title**	**Crd**	**Grd**	**Pts**	**R**
		Fall 2017				
ECON	243	International Trade	3.00	A	12.00	
GERM	032	Intens Interm Germ:Exper Germ	6.00	A	24.00	
GOVT	260	International Security	3.00	A-	11.01	
SOCI	195	Sociology of Terrorism	3.00	A	12.00	

----------Continued on Next Page----------

01-OCT-2019

Annamarie Bianco
Associate Vice President and University Registrar

GEORGETOWN UNIVERSITY
EXPLANATION OF GRADING SYSTEM
Effective Fall 1993

Undergraduate Grading System

Grade	Quality Points	Description
A	4.00	Superior
A-	3.67	
B+	3.33	
B	3.00	Good
B-	2.67	
C+	2.33	
C	2.00	Average
C-	1.67	
D+	1.33	
D	1.00	Minimum Passing
F	0.00	Failure
W		Withdrawal
•S		Satisfactory (A,B,C)
•U		Unsatisfactory
AU		Audit
IP		In Progress
NR		Grades not yet reported
N		Incomplete (a temporary grade which must be resolved within a specified time)

FOR GRADUATION: a) Minimum Quality Point Index of 2.0
b) 120 to 142 semester hours, depending on the individual program.

Graduate Grading System

Grade	Quality Points	Description
A	4.00	
A-	3.67	
B+	3.33	
B	3.00	
B-	2.67	
C	2.00	
F	0.00	
I		Incomplete
W		Withdrawal
•S		Satisfactory
•U		Unsatisfactory
AU		Audit
IP		In Progress
NR		Grades not yet reported

No Quality Points are presented on graduate records.

SEMESTER IS 15 WEEKS
*Not included in the quality hours or Q.P.I.
Grades for courses taken in overseas study programs are recorded as given at the host institution.
"CBL": indicator of Community Based Learning component

September 1962 - August 1993
Undergraduate Grading System

A	SUPERIOR	F	FAILURE	AU	AUDIT
B	GOOD	W	WITHDRAWAL	IP	IN PROGRESS
C	AVERAGE	•S	SATISFACTORY (A,B,C)	NR	NO GRADE REPORTED
D	PASSING	U	UNSATISFACTORY		

June 1968 - August 1993
Graduate Grading System

A	EXCELLENT	F	FAILURE	U	UNSATISFACTORY
B+	SUPERIOR	I	INCOMPLETE	AU	AUDIT
B	GOOD	W	WITHDRAWAL	IP	IN PROGRESS
C	FAIR	S	SATISFACTORY	NR	NO GRADE REPORTED

E in column headed "R" indicates course excluded from Earned Hours and GPA
I in column headed "R" indicates course excluded from Earned Hours only

IN COURSES APPLICABLE TO THE DEGREE SOUGHT, QUALITY POINTS ARE ASSIGNED AS FOLLOWS:
A - 4, B - 3, C - 2, D - 1, F - 0

A PLUS SIGN AFTER A GRADE CARRIES AN ADDITIONAL .5 QUALITY POINT PER CREDIT

•CREDITS ADDED IN TOTAL EARNED, NOT IN THE QUALITY HOURS, OR Q.P.I.

NO QUALITY POINTS ARE ASSIGNED TO COURSES TAKEN AS A GRADUATE STUDENT

EXPLANATION OF THE UNDERGRADUATE AND GRADUATE COURSES NUMBERING SYSTEM

COURSE LEVEL	NUMBERS
UNDERGRADUATE ONLY	001 - 199
UPPERCLASS UNDERGRADUATE	200 - 299
UNDERGRADUATE TUTORIALS, READINGS, RESEARCH	300 - 349
UPPERCLASS UNDERGRADUATE & GRADUATE	350 - 499
GRADUATE LECTURES	500 - 699
GRADUATE SEMINARS	700 - 899
GRADUATE RESEARCH, TUTORIALS, READINGS	900 - 999
THESIS RESEARCH	999

Send To : GEORGETOWN UNIVERSITY

Record of: Connor Ossama Sakati
ID:: 828527878

GEORGETOWN UNIVERSITY
OFFICE OF THE UNIVERSITY REGISTRAR
WASHINGTON, D.C. 20057
(202)687-4020

First Honors

Subj	Crs	Title	Crd	Grd	Pts	R
Spring 2018						
HIST	161	Middle East II	3.00	A	12.00	
INAF	351	Post 1979 Paksta,Afghan,Iran	3.00	A-	11.01	
STIA	364	Env Security in the Arctic	3.00	A	12.00	
UNXD	355	Environmental Stewardship	1.00	S	0.00	

Transcript Totals

	EHrs	QHrs	QPts	GPA
Current	10.00	9.00	35.01	3.890
Cumulative	138.00	109.00	422.37	3.874

End of Undergraduate Record

01-OCT-2019

Annamarie Bianco
Associate Vice President and University Registrar

GEORGETOWN UNIVERSITY
EXPLANATION OF GRADING SYSTEM
Effective Fall 1993

Undergraduate Grading System

Grade	Quality Points	Description
A	4.00	Superior
A-	3.67	
B+	3.33	
B	3.00	Good
B-	2.67	
C+	2.33	
C	2.00	Average
C-	1.67	
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D	1.00	Minimum Passing
F	0.00	Failure
W		Withdrawal
•S		Satisfactory (A,B,C)
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FOR GRADUATION: a) Minimum Quality Point Index of 2.0
b) 120 to 142 semester hours, depending on the individual program.

Graduate Grading System

Grade	Quality Points	Description
A	4.00	
A-	3.67	
B+	3.33	
B	3.00	
B-	2.67	
C	2.00	
F	0.00	
I		Incomplete
W		Withdrawal
•S		Satisfactory
•U		Unsatisfactory
AU		Audit
IP		In Progress
NR		Grades not yet reported

No Quality Points are presented on graduate records.

SEMESTER IS 15 WEEKS
*Not included in the quality hours or Q.P.I.
Grades for courses taken in overseas study programs are recorded as given at the host institution.
"CBL": indicator of Community Based Learning component

September 1962 - August 1993
Undergraduate Grading System

A	SUPERIOR	F	FAILURE	AU	AUDIT
B	GOOD	W	WITHDRAWAL	IP	IN PROGRESS
C	AVERAGE	•S	SATISFACTORY (A,B,C)	NR	NO GRADE REPORTED
D	PASSING	U	UNSATISFACTORY		

June 1968 - August 1993
Graduate Grading System

A	EXCELLENT	F	FAILURE	U	UNSATISFACTORY
B+	SUPERIOR	I	INCOMPLETE	AU	AUDIT
B	GOOD	W	WITHDRAWAL	IP	IN PROGRESS
C	FAIR	S	SATISFACTORY	NR	NO GRADE REPORTED

E in column headed "R" indicates course excluded from Earned Hours and GPA
I in column headed "R" indicates course excluded from Earned Hours only

IN COURSES APPLICABLE TO THE DEGREE SOUGHT, QUALITY POINTS ARE ASSIGNED AS FOLLOWS:
A - 4, B - 3, C - 2, D - 1, F - 0

A PLUS SIGN AFTER A GRADE CARRIES AN ADDITIONAL .5 QUALITY POINT PER CREDIT

•CREDITS ADDED IN TOTAL EARNED, NOT IN THE QUALITY HOURS, OR Q.P.I.

NO QUALITY POINTS ARE ASSIGNED TO COURSES TAKEN AS A GRADUATE STUDENT

EXPLANATION OF THE UNDERGRADUATE AND GRADUATE COURSES NUMBERING SYSTEM

COURSE LEVEL	NUMBERS
UNDERGRADUATE ONLY	001 - 199
UPPERCLASS UNDERGRADUATE	200 - 299
UNDERGRADUATE TUTORIALS, READINGS, RESEARCH	300 - 349
UPPERCLASS UNDERGRADUATE & GRADUATE	350 - 499
GRADUATE LECTURES	500 - 699
GRADUATE SEMINARS	700 - 899
GRADUATE RESEARCH, TUTORIALS, READINGS	900 - 999
THESIS RESEARCH	999

Send To : GEORGETOWN UNIVERSITY

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Connor Sakati

Dear Judge Walker:

I write with great enthusiasm to recommend Connor Sakati for a clerkship in your chambers. Connor is one of my favorite students from my almost-15 years of teaching. He is bright and hard-working, but more than that, he is willing to take contrary positions when he thinks he is right, he is able to disagree agreeably, he is persuasive and thoughtful, and he is an all-around delightful person to talk to. He is also one of the most socially aware students I can recall in his personal dealings with others and the most committed to public service. In short, Connor is the student I am most happy to write a letter for this year (or in the last several years, for that matter). He will make an excellent law clerk and lawyer.

I met Connor in August 2022 when he enrolled in my International Environmental Law class. Broadly speaking, the class covers three units: 1) the design and negotiation of international environmental treaties; 2) principles of international environmental law (e.g., rules on environmental impact assessment, the precautionary principle); and 3) discrete issues in international environmental law (e.g., oceans law, ozone depletion, climate change). The class is discussion-based, rather than lecture-based, which means that students do most of the talking. This particular section had only nine students, which meant that each student's participation was critical to making the discussion a success.

Connor was the best student (and received the highest grade) in the class. Connor showed up to each class having thought about the reading and, if I had to guess, having played in his head the devil's advocate to the positions taken in the reading. This preparation meant that Connor was able to critique the material constructively and offer points of view dismissed or not presented in the reading. For example, at several points Connor argued that unilateral environmental measures (such as carbon border adjustments, i.e., carbon tariffs) might be necessary given the lack of adequate progress in multilateral negotiations. In our discussion of biodiversity protection, Connor pointed out that requiring conservation without aligning economic incentives was likely to fail, contrary to a number of his classmates who favored a more top-down regulatory approach that is likely to be difficult to administer in developing countries. A common thread was Connor's unwillingness to simply accept that the multilateral treatymaking process necessarily produced good outcomes. Throughout these discussions, Connor expressed himself thoughtfully and respectfully, especially when he was disagreeing with others. He is the kind of person that will shine both in collaborative settings and when facing off against opposing counsel.

Connor's final paper for the class, on a legal regime for fishing in contested Arctic waters, was equally good. Connor's writing style is easy and accessible, and his analysis of legal problems is sharp. Students submitted both a rough draft and a final draft. I was particularly impressed by Connor's ability to take constructive criticism and use it to make his paper better. Connor's rough draft was the best draft I received, both in the sense of being the most complete and the best written. I gave Connor a number of suggestions, especially on how to write for a non-expert audience and how to refine his proposal to resolve jurisdictional difficulties in Arctic. Connor implemented the suggestions very effectively. I would say that, despite having the best draft to start with, Connor's paper also showed the most improvement from rough to final draft. Connor submitted the paper not only in satisfaction of his course requirement, but he also submitted it as part of an application to be a Salzburg Cutler Fellow, a program that brings together four students interested in international affairs from each of the top 15 law schools in the country. His paper was selected, and Connor attended the program in Washington, D.C., as one of Duke's representatives.

In the spring of 2023, Connor enrolled in my International Trade Law class, which covers both U.S. trade law and the law of the World Trade Organization. Connor received a 3.5 in the class (roughly an A- on Duke's scale) based on a final exam. Connor's performance in class was exactly what I would have expected. He easily mastered a range of legal and economic concepts, and he was especially thoughtful about the tradeoffs involved in applying trade law doctrines (such as economic discrimination or national security exceptions) broadly versus narrowly. He was a regular participant in class discussions and unlike many students in law school classes, his contributions to discussions were not soapbox speeches; rather, they were genuine engagements with what other students had said. To my mind, his approach to class showed a generosity of spirit toward his students, as well as the ability to adapt his thoughts to the flow of a debate.

Finally, I would be remiss if I did not note what a fine person Connor is. I serve as Connor's adviser in the Public Interest Public Service (PIPS) program. In that role, I have had the chance to get to know Connor outside of class and the opportunity to speak to him at length about his career. Connor is as committed to a career in public service as any student I have known, and equally suited to one. The son of a soldier, Connor is pursuing a commission as an officer in the Army Reserve. Doing so is not easy, as it requires him to undertake additional training during law school. Connor will also obtain a master's in public policy during his time

at Duke, focusing on development economics. His interest in public policy is broad, with a particular interest in environmental issues, so I am not sure exactly what field of law he will practice in. I am confident, though, that whichever direction he goes, he will have a major impact.

If I can be of any further assistance, please do not hesitate to let me know.

Best,

Tim Meyer
Richard Allen/Cravath Distinguished Professor in International Business Law
Co-Director, Center for International and Comparative Law

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Connor Sakati

Dear Judge Walker:

I write to offer my recommendation of Connor Sakati for a clerkship in your chambers. Throughout the current academic year, I have worked closely with Connor in three different settings – a small research tutorial, an independent study, and a faculty advisory committee – that offered me ample opportunity to get to know him, observe his work with others, and evaluate his performance. In each setting, Connor has impressed me (and others) with his intellect, leadership abilities, and the quality of his character. I have tremendous regard for him and offer him my unequivocal support.

Last semester, I supervised Connor in a small, six-student research tutorial in preparation for a binational workshop of government officials and scientists focused on governance and protection of migratory marine species. As part of the tutorial, students conducted extensive independent legal and factual research, produced background reports for workshop participants, served as rapporteurs for the two day workshop, and collaborated on a report summarizing the proceedings and recommendations. Through this work, Connor became quite interested in challenges to bilateral cooperation and governance and is now conducting an independent study to explore comparative approaches in more detail. In addition, Connor serves as a student representative to the Faculty Advisory Committee for Public Interest and Pro Bono (PIPB) at Duke Law School, for which I serve as Faculty Chair.

Connor's intellectual curiosity and maturity were evident from the first meeting of our research tutorial. He volunteered to undertake research into federal environmental laws and fisheries management, engaged actively with experts in the field who came in as guest speakers, asked probative questions, and helped his classmates analyze findings from their own research. He proved adept at researching unfamiliar legal topics quickly and thoroughly and explaining them clearly and succinctly. He also capably distilled their most important aspects and explained them orally and in writing to a non-legal (and indeed, foreign) audience. Remarkably, Connor did this work despite a heavy course load and significant extracurricular commitments to the Alaska Law Journal, the Government and Public Service Society (GPS), and other activities. Connor's skill in managing his time and focusing his energy is quite remarkable.

Connor is able to leverage his intellectual and analytical skills as both a member and a leader of a team. During our research tutorial, all six students worked as a co-author team, setting deadlines and forming team expectations. Connor facilitated many of the conversations, bringing the team to agreement on a work plan and a schedule. He worked with students across disciplines (three members of the tutorial were law students, three were master's students in environmental science policy), helping environmental students understand the law and learning from environmental students about their discipline's methodologies and jargon. He also volunteered to help other students with their research when they fell behind, ensuring the entire project met its deadlines. Connor's leadership skills are evident in his work on the PIPB committee, as well. He serves as an active liaison to the public service-oriented student body, effectively advocating for improvements to the program. More impressive, however, are the times he has challenged proposals from faculty and staff that he believes would undermine the intent and service of the program. Connor raises important questions diplomatically, and his ability to respectfully present his perspective and analysis carries force.

Finally, Connor is a person of strong moral character, committed to public service in both his professional goals and his outside interests. Connor actively seeks to engage his peers in improving access to legal services, regardless of their specific career paths. He currently leads the Government and Public Service Society, one of the largest student organizations at our school. In that capacity, Connor has advocated to and sought out the opinions of the public interest faculty, earnestly working to improve the school's support for public interest students. He has been involved in advocacy to improve LRAP funding, and successfully worked with the Public Interest and Pro Bono efforts to expand access for 2L summer funding and increase public interest programming. He has volunteered with ski patrol search and rescue efforts, and here in his law school home of the Piedmont of North Carolina, he volunteers as an EMT in wilderness search and rescue.

Connor aspires to work for the government, ideally for the Department of Justice. In addition to the contributions he would make to your chambers, a clerkship would provide him with the opportunity to gain firsthand experience with the complexities and nuances of litigation and develop models of effective advocacy. I offer him my strongest recommendation for this clerkship.

Michelle Nowlin - Nowlin@law.duke.edu - 919-613-8502

Please let me know if you have any questions about Connor's qualifications.

With kind regards,

Michelle Benedict Nowlin
Clinical Professor of Law
Co-Director, Environmental Law and Policy Clinic

Policing the Exception: Balancing Government Effectiveness and Liberty through Insurrection Act Reform[1]

By Connor Sakati

"I am pleading to you, as President of the United States, in the interest of humanity, law, and order and because of democracy worldwide, to provide the necessary federal troops within several hours."[2] Seldom does a mayor plead the President of the United States to send the military to his city, as Little Rock Mayor Woodrow Wilson Mann did on September 24, 1957.[3] However, on that day, Mayor Mann faced a mob blocking nine black high school students from attending class at the all-white Little Rock Central High School, openly defying the Supreme Court's ruling in *Brown v. Board of Education*[4] requiring schools to racially integrate.[5] Arkansas Governor Orval Faubus refused to help enforce the law; he too scorned the decision and even ordered nearly three hundred Arkansas National Guard soldiers to help the mob blockade the students from their new school.[6] Faced with the breakdown of order in his city, Mayor Mann realized that only the federal military could enforce federal law and protect the schoolchildren.

President Dwight Eisenhower famously granted Mayor Mann's request, placing the Arkansas National Guard under federal control and deploying soldiers from the United States Army's 101st Airborne Division, bayonets affixed to their rifles,[7] to escort the nine children to

[1] I excerpted this writing sample from a forty-page term paper I wrote for my National Security Law seminar.
[2] Telegram from Woodrow Wilson Mann, Mayor, Little Rock, to Dwight D. Eisenhower, President (Sept. 24, 1957) (on file with the Dwight D. Eisenhower Presidential Library, Museum, and Boyhood Home), https://www.eisenhowerlibrary.gov/sites/default/files/research/online-documents/civil-rights-little-rock/1957-09-24-mann-to-dde.pdf (punctuation and capitalization added) [hereinafter Mann Telegram].
[3] *Id.*
[4] 347 U.S. 483, 495 (1954) (holding that "[s]eparate educational facilities are inherently unequal" and that segregated schools therefore deprived plaintiffs of the equal protection of the law).
[5] Mann Telegram, *supra* note 2; Relman Morin, *AP Was There: Paratroops With Bayonets Escort Little Rock Nine*, ASSOCIATED PRESS (Sept. 24, 2017), https://apnews.com/article/360439e805eb4db180fbfd52a7a0f5bb.
[6] Gerald Jaynes, *Little Rock Nine*, BRITANNICA, https://www.britannica.com/topic/Little-Rock-Nine (last updated May 17, 2023).
[7] Morin, *supra* note 5.

their school and end mob rule.[8] For authority, President Eisenhower relied on a statute, now codified at 10 U.S.C. §§ 251–55[9] and colloquially termed the Insurrection Act, that is an exception to the general rule barring federal military forces from participating in domestic civil law enforcement.[10] The Insurrection Act grants the President the authority to provide "Federal [military] aid for State governments,"[11] use "the militia and armed forces to enforce Federal authority,"[12] and deploy military forces to stop "[i]nterference with State and Federal law."[13] These broad powers endow the President with discretionary authority; only § 251 requires the approval of another government institution, a state government, before its invocation.[14]

Federal troops rarely enforce domestic law in the United States.[15] Deployed to Little Rock, United States Army Lieutenant Damron noted "the astonishment and bewilderment on many faces" as his convoy rolled though the city.[16] Residents who associated the United States Army and the 101st Airborne Division with battles abroad were "mostly stunned by the military presence."[17]

The astonishment of Little Rock's residents is unsurprising. Americans possess "a traditional and strong resistance . . . to any military intrusion into civilian affairs."[18] This

[8] Gregory Frye, *Army Commemorates 1957 Little Rock Deployment*, U.S. ARMY (Sept. 19, 2011), https://www.army.mil/article/4897/army_commemorates_1957_little_rock_deployment.
[9] Mann Telegram, *supra* note 2.
[10] *See* 18 U.S.C. § 1385 (criminalizing any domestic use of the armed forces to enforce the law not otherwise authorized).
[11] 10 U.S.C. § 251.
[12] 10 U.S.C. § 252.
[13] 10 U.S.C. § 253.
[14] *See* 10 U.S.C. §§ 251–55 (granting the President discretionary authority to deploy troops in many domestic circumstances).
[15] *See* Michael Rouland & Christian Fearer, *Calling Forth the Military: A Brief History of the Insurrection Act*, NAT'L DEF. U. PRESS (Nov. 19, 2020), https://ndupress.ndu.edu/Media/News/News-Article-View/Article/2421411/calling-forth-the-military-a-brief-history-of-the-insurrection-act/ (describing the few Insurrection Act invocations in recent history).
[16] Frye, *supra* note 8.
[17] *Id.*
[18] Laird v. Tatum, 408 U.S. 1, 15 (1972).

skepticism "has deep roots in our history," tracing itself to our nation's revolution and finding "early expression, for example, in the Third Amendment's explicit prohibition against quartering soldiers in private homes without consent and in the constitutional provisions for civilian control of the military."[19] The Declaration of Independence protested, in part, King George III's move "to render the Military independent of and superior to the Civil Power."[20]

Nevertheless, some exceptionally rare circumstances, like Little Rock in 1957, require the Insurrection Act's break with tradition and expectations. There, state government had flaunted federal authority, depriving citizens of their rights through the state's own National Guard forces. Who else but federal troops could restore order, protect liberty, and give effect to the words in *Brown*? Similarly, during Reconstruction, the Insurrection Act played a key role in suppressing a militia battling for the Arkansas governorship and subduing a white mob "massacr[ing]" black citizens in Vicksburg.[21] More recently, Presidents have invoked the Act in response to major disturbances and civil unrest like the 1992 Los Angeles Riots.[22]

Here, I omit a section outlining my argument and reform proposals, which draw on international law of armed conflict principles and contemporary German constitutional practice.

[19] *Id.*; *see also* ELIZABETH GOITEIN & JOSEPH NUNN, BRENNAN CTR. FOR JUST., THE INSURRECTION ACT: ITS HISTORY, FLAWS, AND A PROPOSAL FOR REFORM 2–6 (2022) (describing the history of the Posse Comitatus Act).
[20] THE DECLARATION OF INDEPENDENCE para. 14 (U.S. 1776); *see also* GOITEIN & NUNN, *supra* note 19, at 3.
[21] Maya Wiley, *How Trump Dangerously Turned An Old Law On Its Head—And What Congress Must Do About It*, THE NEW REPUBLIC (May 2, 2022), https://newrepublic.com/article/166263/trump-insurrection-act-lafayette-square-congress-fix.
[22] Rouland & Fearer, *supra* note 15.

I. The General Rule: The Posse Comitatus Constraint

The Constitution permits the federal government and the states to use the military domestically to enforce the law and stem internal violence. Insuring "domestic Tranquility" was, after all, a major goal animating the Constitution's creation.[23] The Calling Forth Clause empowers Congress "to provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections, and repel Invasions,"[24] while the Suspension Clause permits Congress to suspend habeus corpus when "in Cases of Rebellion or Invasion the public Safety may require it."[25] The states may even "engage in War" when "actually invaded or in such imminent Danger as will not admit of delay."[26] Moreover, under Article IV, the United States must "protect" each state "against domestic Violence" when that state's government demands assistance.[27]

Although the Constitution empowers the President to lead the military, it also empowers Congress to regulate the military's use. Certainly, the President exercises the "executive Power"[28] and serves as the "Commander in Chief of the Army and Navy of the United States, and of the Militia."[29] Moreover, the President possesses the duty to "take Care that the Laws be faithfully executed."[30] However, Article I gives Congress tools to limit this authority, granting Congress the power to "raise and support Armies"[31] and "make Rules for the Government and Regulation of the land and naval Forces."[32] Congressional power only increases during domestic deployments. Although some scholars suggest that the Calling Forth Clause merely permits

[23] *See* U.S. CONST. pmbl. (describing the reasons why delegates created a new Constitution).
[24] *Id.* art. I, § 8, cl. 15.
[25] *Id.* art. I, § 9, cl. 2.
[26] *Id.* art. I, § 10, cl. 3.
[27] *Id.* art. IV, § 4.
[28] *Id.* art. II, § 1, cl. 1.
[29] *Id.* art. II, § 2, c1. 1.
[30] *Id.* art II, § 3.
[31] *Id.* art. I, § 8, cl. 12.
[32] *Id.* art. I, § 8, cl. 14.

Congress to regulate the militia's use, others argue that, when Congress places guardrails on the domestic deployment of federal troops, that clause "resolves in Congress's favor any argument that such statutory limitations unconstitutionally infringe upon the President's constitutional authority as commander in chief."[33]

Congress has exercised this prerogative, creating a statutory framework limiting the President's authority to use the military to enforce the law domestically. The general rule, the Posse Comitatus Act, is that no one may use military forces under federal control to enforce civilian law.[34] The Posse Comitatus Act criminalizes using the armed forces to enforce the law unless the Constitution or another law authorizes their use, commanding that:

> "Whoever, *except in cases and under circumstances expressly authorized by the Constitution or Act of Congress*, willfully uses any part of the Army, the Navy, the Marine Corps, the Air Force, or the Space Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both."[35]

Note that the Coast Guard, due to its unique law enforcement role, is excepted.[36] Although the Posse Comitatus Act is a criminal provision, found within U.S. Code Title 18 alongside most major federal crimes, no prosecutions have ever relied on the statute.[37] Instead, courts have used it as a "guidepost" to constrain executive power.[38] For example, the Eighth Circuit Court of

[33] Stephen I. Vladeck, *The Calling Forth Clause and the Domestic Commander in Chief*, 29 CARDOZO L. REV. 1091, 1094–95 (2008).
[34] 18 U.S.C. § 1385.
[35] *Id.* (emphasis added).
[36] *See id.* (mentioning all other branches of the armed forces but omitting the Coast Guard); *see also* 6 U.S.C. § 468 (describing the Coast Guard's statutory mission, including domestic law enforcement).
[37] *Reference Sheet on the Insurrection Act and Related Authorities*, BROOKINGS INSTITUTION, https://www.brookings.edu/wp-content/uploads/2020/12/ReferenceSheet_InsurrectionActAndRelatedAuthorities.pdf (last accessed May 30, 2023).
[38] Bissonnette v. Haig, 776 F.2d 1384, 1388 (8th Cir. 1985).

Appeals has held that violating the Posse Comitatus Act renders a search or seizure "constitutionally 'unreasonable.'"[39] Despite the Posse Comitatus Act's bigoted origins (it was created to stop federal troops from enforcing voting rights during Reconstruction),[40] Congress has found that it "has served the Nation well in limiting the use of the Armed Forces to enforce the law."[41]

The Posse Comitatus Act does not bar military assistance to law enforcement completely. Rather, the Act only bars assistance involving military personnel that constrains citizens through military power. To constitute a Posse Comitatus violation, military "personnel" must have "subjected the citizens to the exercise of military power which was regulatory, proscriptive, or compulsory in nature, either presently or proscriptively."[42] A "mere threat" does not rise to the level of a violation.[43] Thus, while sharing tools, conducting surveillance, and counselling civilian law enforcement may not violate the Act, "maintained roadblocks" or "armed patrols" will.[44] Yet, when a United States Army Colonel advised federal law enforcement during a standoff by advocating for stricter rules of engagement, urging negotiations, and managing logistics, he could have "appreciably affected" law enforcement operations and therefore may have violated the Act.[45]

Constitutional considerations further qualify the Posse Comitatus rule. Although the Constitution does "not expressly grant [the President] any independent authority to use the armed

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[39] *Id.* at 1389.
[40] Axel Melkonian, *The Posse Comitatus Act: Its Reconstruction Era Roots and Link to Modern Racism*, SYDNEY U. L. SOC'Y (Sept. 2, 2020), https://www.suls.org.au/citations-blog/2020/8/28/the-posse-comitatus-act-its-reconstruction-era-roots-and-link-to-modern-racism.
[41] 6 U.S.C. § 466(a)(3).
[42] Bissonnette v. Haig, 776 F.2d 1384, 1390 (8th Cir. 1985). This test "is based on" language drawn from the Supreme Court's decision in *Laird v. Tatum*, 408 U.S. 1, 9–11 (1972). *Bissonnette*, 776 F.2d at 1390.
[43] *Bissonnette*, 776 F.2d at 1390.
[44] *Id.*
[45] United States v. Jaramillo, 380 F. Supp. 1375, 1377–1381 (D. Neb. 1974). The District Court did not determine whether these acts did, in fact, violate the Posse Comitatus Act. *Id.* at 1380–81.

forces at home,"[46] the Supreme Court has determined that the President does possess some inherent constitutional powers to deploy the military. Indeed, in President Eisenhower's declaration ordering federal troops to Little Rock, he cited to his inherent powers to use troops before citing to the Insurrection Act's statutory grant of authority.[47] Foremost, the Supreme Court has held that the President has both the inherent power and duty to defend the country when attacked.[48] Additionally, while striking down the use of martial law in Indiana during the Civil War, the Supreme Court noted that narrow uses of martial law may be allowed during unrest if, due to violence, the "courts are actually closed, and it is impossible to administer criminal justice according to law."[49] However, martial law may only extend to "the theatre of active military operations."[50] Even Congress agrees that:

> "the Posse Comitatus Act is not a complete barrier to the use of the Armed Forces for a range of domestic purposes, including law enforcement functions, when the use of the Armed Forces . . . is required to fulfill the President's obligations under the Constitution to respond promptly in time of war, insurrection, or other serious emergency."[51]

II. The Insurrection Act: An Exception to Normal Practice

The Insurrection Act, Chapter 13 of United States Code Title 10, is one such "circumstance expressly authorized by . . . Act of Congress" allowing the President to use the military to enforce the law domestically.[52] The Insurrection Act contains three different provisions permitting domestic military deployments in overlapping circumstances.

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[46] GOITEIN & NUNN, *supra* note 19, at 6.
[47] Exec. Order No. 10730, 22 Fed. Reg. 7628 (Sept. 24, 1957).
[48] The Brig Amy Warwick (The Prize Cases), 67 U.S. (2 Black) 635, 668 (1862).
[49] *Ex Parte* Milligan, 71 U.S. (4 Wall.) 2, 127 (1866).
[50] *Id.*
[51] 6 U.S.C. § 466(a)(5).
[52] 18 U.S.C. § 1385; 10 U.S.C. §§ 251–255.

Section 251, entitled "Federal aid for State governments," permits the President to assist a state government under assault, echoing how Constitution Article IV allows the federal government to protect the states against internal violence when they request aid.[53] This section is the least discretionary, only granting power to the President in situations when "there is an insurrection in any State against its government" and after either the "legislature" or "governor" of the impacted state requests aid.[54] When these conditions are both satisfied, the President can federalize "militia," but only in the amount the distressed state requests, and mobilize federal "armed forces" in his discretion.[55] He must use these forces "to suppress the insurrection."[56]

Section 252 provides the President broader, more discretionary powers "to enforce Federal authority," requiring no state government permission to use force.[57] The President must determine two conditions to exist before using the military under this section. First, the President must determine that there exists either "*unlawful* obstructions, combinations, or assemblages" or a "rebellion against the authority of the United States."[58] The plain meaning of unlawful need not incorporate violence or danger; a peaceful assembly could perhaps be unlawful without a valid permit. Second, the President must determine that the unlawful obstruction or rebellion has made it "*impracticable* to enforce the laws of the United States . . . by the *ordinary course* of judicial proceedings."[59] The plain meaning of impracticable implies a more subjective, less onerous

[53] *Compare* U.S. CONST. art. IV, § 4 ("The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.") *with* 10 U.S.C. § 251 ("Whenever there is an insurrection in any State against its government, the President may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection.").
[54] 10 U.S.C. § 251.
[55] *Id.*
[56] *Id.*
[57] *See* 10 U.S.C. § 252 (omitting any requirement to obtain another institution's permission prior to invocation).
[58] *Id.* (emphasis added).
[59] *Id.* (emphasis added).

burden than impossibility.[60] Additionally, requiring only that the unlawful acts obstruct government's "ordinary course" does not require the President to take additional efforts to enforce the law before using military force. Once the President has determined that these two conditions exist, he may then use any "militia" or "armed forces" that "he considers necessary" to confront the situation, again a discretionary choice.[61]

Section 253 also provides the President broad powers to stop "interference with State and Federal law" by an "insurrection, domestic violence, unlawful combination, or conspiracy." Yet, unlike § 251 and §252, which are both grants of power using the word "may," § 253 directs that the President "shall" take measures by "using the militia or armed forces" or "any other means." Like both preceding sections, § 253 leaves the choice of which forces to use in the President's hands, "as he considers necessary." The President may use military forces under this section in two different situations.[62] First, the President can invoke the section when an insurrection "hinders the execution" of state and federal law, thereby denying citizens a constitutional "right, privilege, immunity, or protection."[63] The local government must also have been "unable, fail[ed], or refuse[d]" to resolve the situation.[64] Second, the President may also invoke § 253 when an insurrection either "opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws."[65]

The two remaining sections of Chapter 13, § 254 and § 255, grant no powers. Instead, § 254 constrains presidential power by requiring that, whenever the President invokes §§ 251, 252,

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[60] *Compare Impossibility*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("A fact or circumstance that cannot occur, exist, or be done.") *with Impracticability*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("For performance to be truly impracticable, the duty must become much more difficult or much more expensive to perform, and this difficulty or expense must have been unanticipated.").
[61] 10 U.S.C. § 252.
[62] 10 U.S.C. § 253.
[63] *Id.*
[64] *Id.*
[65] *Id.*

or 253, he must "immediately" issue a proclamation ordering "the insurgents to disperse and retire peaceably to their abodes within a limited time." This is not an insignificant limitation, for it means the President must give prior, public notice of his intention to use the military and cannot use the military covertly under these authorities. Section 255 is merely definitional, including Guam and the Virgin Islands within the Insurrection Act's scope.

Through the Insurrection Act, Congress grants a high degree of discretion to the President; courts have played little role in reviewing Presidential actions taken under the Act. The Supreme Court, interpreting an earlier, 1795 version of the Act, determined that discretion under the Act "is exclusively vested in the President, and his decision is conclusive upon all other persons."[66] That version employed language broadly similar to the Act's current text, declaring that "it shall be lawful for the President of the United States to call forth such number of the militia . . . *as he may judge necessary* to repel such invasion."[67] The Court found that "[w]henever a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of those facts."[68]

In reaching this holding, the Court also relied on the President's role as "commander in chief" with the duty to "take care" of the law's execution, asserting that "[h]e is necessarily constituted the judge of the existence of the exigency in the first instance, and is bound to act according to his belief of the facts."[69] When confronted with the enormous power this holding

[66] Martin v. Mott, 25 U.S. (12 Wheat.) 19, 28 (1827).
[67] *Id.* at 29 (emphasis added).
[68] *Id.* at 31–32.
[69] *Id.* at 31.

granted, the Court responded that it is "no answer that such a power may be abused, for there is no power which is not susceptible of abuse."[70]

However, a later Supreme Court case may have qualified presidential discretion to good faith invocations of the Act. Although the case involved the Governor of Texas, the Court analogized the Governor to the President when reaching its conclusions.[71] The Court admitted that, when an executive deploys the militia, "there is a permitted range of *honest* judgment as to the measures to be taken in meeting force with force, in suppressing violence and restoring order."[72] When executive decisions are "conceived in *good faith*, in the face of the emergency, and directly related to the quelling of the disorder or the prevention of its continuance," those decisions are within the executive's discretion.[73] However, this argument should not be carried to its extreme, for those acts "unjustified by the exigency or subversive of private right and the jurisdiction of the courts" become "mere executive fiat," and are not within the executive's powers.[74] To stop such overreach, "the allowable limits of military discretion" and whether those limits have been "overstepped" still remain "judicial questions."[75]

The Insurrection Act's invocation may unlock extraordinary constitutional penalties punishing "insurrection or rebellion" against the United States.[76] The Fourteenth Amendment includes a provision barring anyone who has ever sworn to support the Constitution and subsequently "engaged in insurrection or rebellion against the [the United States], or given aid or comfort to the enemies," from holding state or federal office.[77] Yet, that Amendment does not

[70] *Id.* at 32.
[71] Sterling v. Constantin, 287 U.S. 378, 399 (1932).
[72] *Id.* (emphasis added).
[73] *Id.* at 400 (emphasis added).
[74] *Id.*
[75] *Id.* at 400–401.
[76] U.S. CONST. amend. XIV, § 3; JENNIFER ELSEA, CONG. RES. SERV., LSB10569, THE INSURRECTION BAR TO OFFICE: SECTION 3 OF THE FOURTEENTH AMENDMENT 3 (2022).
[77] U.S. CONST. amend. XIV, § 3.

define these disqualifying terms. Under one view, since the Calling Forth Clause grants Congress the power to regulate when forces may be mobilized and deployed to "suppress Insurrection,"[78] and Congress exercises this power through the Insurrection Act, the Insurrection Act's invocation defines when an "insurrection or rebellion" occurs.[79] If correct, a discretionary presidential choice would shape a constitutional punishment's scope.

My paper then discusses the different authorizing statutes under which the National Guard operates and how these authorities interact with the Posse Comitatus Act, as well as other statutory exceptions to the Posse Comitatus constraint. Later, my paper continues by analyzing past Insurrection Act invocations and proposed invocations. Drawing from these examples, I propose new guardrails for the Insurrection Act designed to stop two categories of abuse I identify: bad faith invocations and disproportionate invocations.

[78] *Id.* art. I, § 8, cl. 15.
[79] ELSEA, *supra* note 76, at 3.

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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The Honorable Jamar K. Walker
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Dear Judge Walker,

I am a first-year associate at Cleary Gottlieb Steen & Hamilton LLP and a graduate of Georgetown University Law Center. I am writing to apply for a 2024-2025 term clerkship in your chambers. I am originally from Silver Spring, Maryland, and am particularly interested in clerking for a judge who is close to my family and hometown.

I have enclosed my resume, writing sample, and unofficial law school transcript for your review. Three professional references are attached to this letter.

Letters of recommendation are also attached from the following:

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Please let me know if I can provide any additional information. I can be reached at 301-938-5087 and tsalemmackall@gmail.com. Thank you very much for your consideration.

Respectfully,

Theodore Salem-Mackall

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Juris Doctor, *cum laude* — May 2022
GPA: 3.82; Dean's List: Fall 2020/Spring 2021/Fall 2022/Spring 2022
Journal: *American Criminal Law Review* Executive Board; Managing Editor of the "Annual Survey of White Collar Crime" (2021-22)
Publications: *"Hugo Will Pull My Hair Out": Justice Black and Mandatory Arbitration on the Warren Court*, 48 Journal of Supreme Court History 54 (2023)
Federal Criminal Prosecutions of Labor Market Restrictions: Small Cases with Big Implications, 58 Am. Crim. L. Rev. Online 101 (2021)
"The Heart of the Business": Analysis of the Antitrust Division's New Policy of Crediting Corporate Compliance at the Charging Stage, 58 Am. Crim. L. Rev. Online 27 (2021)
Pro Bono: Rising for Justice Clinic, Tenant Justice Program (January 2022-May 2022)
Home Court Fellow, Washington Legal Clinic for the Homeless (February 2020-May 2020)

Colgate University — **Hamilton, NY**
Bachelor of Arts, *magna cum laude*, in English — May 2016
GPA: 3.50
Honors: Honors in English
Thesis: *As American as it Gets* (family history/personal memoir)

EXPERIENCE

Cleary Gottlieb Steen & Hamilton LLP, Washington, DC
Associate, October 2022-Present
Performed document review and generated substantial document chronologies in proceedings before the SEC and FINRA. Generated first drafts of filings later used in antitrust and § 1983 litigation. Performed oral argument in federal court in relation to a discovery dispute.

Georgetown University Law Center, (Remote) Washington, DC
Research Assistant to Prof. Maria Glover, June 2021-February 2022
Performed research and substantive drafting for Professor Glover's landmark paper *Mass Arbitration*. Generated audit trails, academic research reports and charts of arbitral claims for the article.

Cleary Gottlieb Steen & Hamilton LLP, (Remote) Washington, DC
Summer Associate, May 2021-July 2021
Performed legal research for antitrust matters and generated legal memos for the Structured Finance group.

U.S. Securities and Exchange Commission, Division of Enforcement, (Remote) Washington, DC
Enforcement Intern, May 2020-July 2020
Examined documents for potentially fraudulent trading activity and drafted deposition outline.

U.S. Department of Justice, Antitrust Division, Washington, DC
Paralegal Specialist, June 2016-February 2019
Reviewed substantial document productions, crafted substantive memoranda, and managed a team of paralegals as the lead paralegal in federal antitrust litigation brought by the Division.

PERSONAL INTERESTS

Songwriting (playing acoustic guitar / banjo), cooking, training in Mixed Martial Arts.

Record of: Theodore J. Salem-Mackall
GUID: 835463932

Course Level: Juris Doctor

Degrees Awarded:
Juris Doctor Jun 08, 2022
Georgetown University Law Center
Major: Law
Honors: Cum Laude

Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2019							
LAWJ	002	93	Bargain, Exchange, and Liability David Super	6.00	A-	22.02	
LAWJ	005	33	Legal Practice: Writing and Analysis Sonya Bonneau	2.00	IP	0.00	
LAWJ	007	93	Property in Time Sherally Munshi	4.00	B	12.00	
LAWJ	009	33	Legal Justice Seminar Lisa Heinzerling	3.00	A-	11.01	

	EHrs	QHrs	QPts	GPA
Current	13.00	13.00	45.03	3.46
Cumulative	13.00	13.00	45.03	3.46

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2020							
LAWJ	001	93	Legal Process and Society Lawrence Solum	5.00	P	0.00	
LAWJ	003	93	Democracy and Coercion Allegra McLeod	4.00	P	0.00	
LAWJ	005	33	Legal Practice: Writing and Analysis Sonya Bonneau	4.00	P	0.00	
LAWJ	008	32	Government Processes Howard Shelanski	4.00	P	0.00	

Mandatory P/F for Spring 2020 due to COVID19

	EHrs	QHrs	QPts	GPA
Current	17.00	0.00	0.00	0.00
Annual	28.00	13.00	45.03	3.46
Cumulative	30.00	13.00	45.03	3.46

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2020							
LAWJ	015	05	American Legal History Daniel Ernst	3.00	A+	12.99	
LAWJ	038	07	Antitrust Law Howard Shelanski	3.00	A	12.00	
LAWJ	121	09	Corporations Donald Langevoort	4.00	A	16.00	
LAWJ	165	07	Evidence Gerald Fisher	4.00	A	16.00	

Dean's List Fall 2020

	EHrs	QHrs	QPts	GPA
Current	14.00	14.00	56.99	4.07
Cumulative	44.00	27.00	102.02	3.78

----------Continued on Next Column----------

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2021							
LAWJ	1098	05	Complex Litigation Maria Glover	4.00	A	16.00	
LAWJ	1528	09	Advanced Antitrust Seminar: Antitrust and Intellectual Property Mark Popofsky	3.00	A	12.00	
LAWJ	1604	05	Affordable Housing Seminar Michael Diamond	3.00	A-	11.01	
LAWJ	396	09	Securities Regulation Chris Brummer	3.00	A-	11.01	

Dean's List Spring 2021

	EHrs	QHrs	QPts	GPA
Current	13.00	13.00	50.02	3.85
Annual	27.00	27.00	107.01	3.96
Cumulative	57.00	40.00	152.04	3.80

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	1647	05	Warren Court Legal History Seminar Brad Snyder	3.00	A-	11.01	
LAWJ	178	07	Federal Courts and the Federal System Michael Raab	3.00	A-	11.01	
LAWJ	215	01	Constitutional Law II: Individual Rights and Liberties Jeffrey Shulman	4.00	A-	14.68	
LAWJ	304	05	Legislation Anita Krishnakumar	3.00	A	12.00	

	EHrs	QHrs	QPts	GPA
Current	13.00	13.00	48.70	3.75
Cumulative	70.00	53.00	200.74	3.79

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	1179	05	Modern Litigation Theory and Practice Seminar Maria Glover	3.00	A	12.00	
LAWJ	361	03	Professional Responsibility Michael Rosenthal	2.00	A-	7.34	
LAWJ	552	05	Housing Advocacy Litigation Clinic at Rising for Justice, Law Students in Court Division Paul diBlasi		NG		
LAWJ	552	80	~Seminar Paul diBlasi	2.00	A-	7.34	
LAWJ	552	81	~Casework Paul diBlasi	3.00	A	12.00	
LAWJ	552	82	~Professionalism Paul diBlasi	2.00	A-	7.34	
LAWJ	626	05	New Deal Legal History Seminar Daniel Ernst	3.00	A+	12.99	

Dean's List 2021-2022

----------Continued on Next Page----------

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Theodore J. Salem-Mackall
GUID: 835463932

---------- **Transcript Totals** ----------

	EHrs	QHrs	QPts	GPA
Current	15.00	15.00	59.01	3.93
Annual	28.00	28.00	107.71	3.85
Cumulative	85.00	68.00	259.75	3.82

---------- **End of Juris Doctor Record** ----------

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 2021

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing in support of Theodore Salem-Mackall's application for a clerkship in your chambers. Theodore is a rising 3L at Georgetown Law, where he was a student this past year in my antitrust law class. Over the course of the semester—an unusual one because of the requirement that classes occur remotely via video—I came to know Theodore quite well. He is tremendously smart, hardworking, and has a sharp eye for incisive questions. I am confident he would be an excellent law clerk.

The class in which I taught Theodore had nearly 100 students. Even in that large setting, Theodore stood out for his ability to identify the key issues in the cases we studied and intelligently discuss the analytical and doctrinal complexities that these cases usually involved. For example, Theodore's grasp of the subtleties and contradictions of rule-of-reason analysis in certain horizontal restraint classes was especially nuanced, and his clear responses to hard questions I asked during class were of great benefit to his classmates. Theodore was able to synthesize the different strands of antitrust law we studied into a coherent framework that made his a leader in our class discussions. I was very grateful to have him in class, particularly given the potentially awkward on-line format.

On several occasions I met with Theodore in office hours, during which we discussed not only antitrust law, but Theodore's broader interest in law and policy. He struck me as a thoughtful, mature, and very sharp student but, more than that, as someone with a genuine interest in a range of legal issues. I had the opportunity to discuss with Theodore some article ideas he was considering. His resulting piece on how the Department of Justice is considering corporate compliance program when making criminal antitrust charges was a sharp and well-written contribution. Based on my experience in class and reading his work, I have little doubt Theodore would make both an excellent law clerk and a good colleague in chambers.

Please do not hesitate to contact me if additional discussion would be helpful.

Sincerely,

Howard Shelanski
Professor of Law
hshelanski@georgetown.edu

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in support of Theodore Salem-Mackall's application for a clerkship in your chambers. I know Mr. Salem-Mackall principally from two courses: (1) a twenty-five-student course in American Legal History in the Fall 2020 semester; and (2) a smaller seminar on the legal history of the New Deal in the Spring 2022 semester. I feel I know him well from our conversations in class, during office hours, and at his graduation. We have since exchanged emails and spoken about his interest in pursuing a clerkship.

American Legal History is a lecture and discussion course on the political history of legal institutions in the United States during the twentieth century, with an emphasis on administrative law, presidential power, and the legal profession. Its central argument is that the legal profession played a central law in subjecting administrative agencies and presidential acts to a particular version of the rule of law, which looked to court-like procedures, if not courts themselves, to keep official discretion in check. The exam, which was the sole basis for Mr. Salem-Mackall's grade, presented him with essays on two topics we did not cover in class but which underwent historical change much like those we did. It was the historical equivalent of an "issue-spotting" exam in a doctrinal law course.

The essays in Mr. Salem-Mackall's exam were on the law and politics of public health administration and on a Black female lawyer named Eunice H. Carter. He handled them beautifully. He aptly compared battles within the Department of the Treasury, where the Public Health Service was housed, over a plague outbreak in 1900, with roughly contemporaneous conflict over immigration within the Department of Commerce and Labor. He also was extremely good on the abandonment of *de novo* judicial review of health officials' fact finding with analogous developments the rate-setting of public utility commissions. In his answer to the second, biographical essay, he drew upon a remarkable range of materials with great specificity and aptness to compare Carter with other Black and other female lawyers. I don't believe I've ever given any exam a higher raw score in my many years teaching the course.

Even more impressive was Mr. Salem-Mackall's paper on *United States v. Socony-Vacuum* (U.S. 1940) in my seminar on the New Deal. Others have written about this judicial landmark, which established that price-fixing is illegal per se under the Sherman Act, but no one has so thoroughly researched it from its origins in the petroleum policy of the early New Deal through its disposition by the Supreme Court in a very different political climate. Mr. Salem-Mackall fully took advantage of the unusual opportunity Georgetown law students have, thanks to their proximity to the Library of Congress and the National Archives, to work in the manuscript collections of prominent lawyers and judges and federal agencies. He put in many hours in the papers of William Douglas, Robert Jackson, Stanley Reed, and the Department of Justice, as well as, on-line, those of Thurman Arnold, who was in charge of the appellate phase of the case. His final paper clearly presented the result of this research in great detail. I particularly liked its rendering of the tension between the seasoned local litigator who tried the case in Madison, Wisconsin, and the young New Deal lawyers in DOJ's Antitrust Division who not just a verdict but a precedent that remade the law. To make the paper publishable, Mr. Salem-Mackall still needs to center it more surely on a single argument, a task he has postponed while he revised a seminar paper on Justice Hugo Black and federal arbitration, which has just appeared in the *Journal of Supreme Court History*.

Yet in its present state, Mr. Salem-Mackall's research paper and his performance in his other course with me convincingly testify to his persistence, intelligence, attentiveness to detail, and imagination. In our conversations, I also found him to be interesting, thoughtful, and engaging. You get a sense of his range from his extracurricular activities as an undergraduate: He was a member of both a rugby team and an experimental theater troupe. His college thesis drew upon his experiences as the first legally adopted child by a same-sex couple in the state of Maryland. Perhaps that background accounts for his openness to those different from himself, which I observed in many classroom exchanges. I am confident he would be an exemplary clerk in your chambers, and I recommend him to you very highly.

Sincerely,

Daniel R. Ernst
Carmack Waterhouse Professor of Legal History

Daniel Ernst - ernst@georgetown.edu

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing on behalf of Theodore Salem-Mackall, Georgetown University Law Center class of 2022, who has applied for a clerkship in your chambers. Theodore has an excellent record of success at Georgetown, as appears on his paper record. He was an excellent student in two of my classes, and as my research assistant, truly outstanding. Having worked very closely with him for two years, I can personally attest that he is intelligent, extremely hard-working, engaged, collaborative, and kind. He would make an excellent clerk, and I recommend him to you with great enthusiasm.

I first met Theodore as a student in my upper-level Complex Litigation course. This course is one of the hardest in the upper-level curriculum at Georgetown, and Theodore was not only up for the challenge, but he also earned an "A" on the final exam. Further, his participation in class reflected both thoughtfulness and preparation. Both in class and on the exam, his facility with and interest in civil litigation and high-level complex litigation shone through. Theodore displayed not only a firm grasp of the "black-letter" concepts, he identified and understood the various interconnections between civil litigation and redress, legal rights, and the overall regulatory apparatus in the United States.

Theodore built on his sophisticated understanding and knowledge of complex litigation in my upper-level Modern Litigation Theory and Practice Seminar. This course is writing intensive, requiring 4-5 page papers each week, and it is pitched at a very high level. It attracts top students eager to engage with difficult materials that range from economic and behavioral economic theories of law and litigation; various models of litigation and settlement (e.g., psychological, finance and options-based, access-to-justice, regulatory); settlement theory and dynamics (including mass settlement and contractual closure); third-party litigation funding models and development; contractual mandatory arbitration; and the potential rise of bankruptcy for mass disputes. Students come out of this course extremely prepared to navigate the most difficult and current issues in litigation in a sophisticated way.

A few of my seminar students have, over the years, taken their learning in my seminar even further and produced a longer, publishable-quality paper. In Theodore's case, he built on themes and concepts he had explored and asked about during the seminar and initiated his own deep dive into the history of mandatory arbitration and its reception in the Supreme Court. In so doing, he unearthed the fascinating and overlooked jurisprudence of Justice Hugo Black, who dissented in six separate decisions in which the Supreme Court enforced a mandatory arbitration agreement. Theodore then derived from these dissents a Federal Arbitration Act jurisprudence not just particular to Black himself, but one that provides somewhat of a rejoinder to—or at least a different account of—the conventional historical narrative that situates the Supreme Court's departure from early Federal Arbitration Act jurisprudence as having occurred largely post-1980. This piece clearly demonstrates Theodore's interest in and commitment to the study of law as well as his work ethic. More than this, though, it makes a novel contribution to the scholarship and study of mandatory arbitration and the Federal Arbitration Act.

Theodore's performance as a student led me to ask him to be a research assistant for the summer of 2021 and the 2021-22 academic year. This time period was one of the most intensive for my recently published study on Mass Arbitration in the *Stanford Law Review*. This Article developed the first and comprehensive case study of mass arbitration and provided a taxonomy of the results. Among other things, developing the study required countless hours of research into a complex web of ever-changing (and often hidden) arbitration agreements used by a number of corporations. Moreover, it required finding, navigating, and making sense of a labyrinth of (often incomplete) arbitral records, court filings, and motions back and forth between courts and arbitral fora. Theodore worked tirelessly to help me build the massive case dataset and to make coherent sense of its vast components. His assistance was truly integral to the production of this study, which has since garnered a number of awards, including most recently the Award for Best Paper of 2022 by the Berkeley Law Civil Justice Research Initiative and the Law and Society Association. Given this, I have no doubt that Theodore is more than up to the task of performing the extensive and difficult work involved in mastering the records and materials of the most complicated of cases.

Finally, Theodore is not just a strong student, writer, and researcher. He is also friendly and collaborative. Based on many interactions with Theodore, I am confident that he has the skills, work ethic, and care required for success in a clerkship. I urge you to give his application the most careful consideration. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

J. Maria Glover
Professor of Law

Maria Glover - jmg338@law.georgetown.edu - 202-662-4029

Writing Sample

Theodore Salem-Mackall

The below paper was prepared in my "Warren Court Legal History Seminar" class at Georgetown University Law Center in the Fall of 2021. It examines Justice Hugo Black's position on the Federal Arbitration Act, and the Warren Court's evolving view towards mandatory arbitration during the 1950s and 60s. It draws on my original research into the justices' personal papers. In June 2023, an edited version of this piece was published in the *Journal of Supreme Court History*.

Although I received feedback from Professor Brad Snyder in preparing this draft, it is entirely my own work. Given the paper's length, I would direct any reader who does not wish to review the full piece to Sections I-IV (p. 1-15). These selected pages effectively display my research and writing skills, as well as the piece's overall thesis. Please also note that pages 22-30 are endnotes.

"Hugo Will Pull My Hair Out"
A History of Hugo Black and Mandatory Arbitration on the Warren Court

Theodore Salem-Mackall

I. Introduction – The Former Alabama Senator

Hugo LaFayette Black was among the Supreme Court's foremost critics of mandatory arbitration. From 1961-67, Black dissented in six cases enforcing a mandatory arbitration clause contained in a contract or collective bargaining agreement.[i] His dissents consistently argued that broad grants of arbitration often came at the expense of a party's constitutional right to a fair "day in court."[ii] The early Warren Court shared Black's concerns. In 1953, the Court held in *Wilko v. Swan* that the right to bring Securities Act claims in federal court could not be waived through a form contract containing an arbitration agreement.[iii] Yet their hostility would not last. In 1967, a very different Warren Court decided *Prima Paint v. Flood & Conklin*.[iv] *Prima* established that the Federal Arbitration Act, passed in 1925 to make arbitration agreements "valid, irrevocable and enforceable" in federal court,[v] was substantive law and could supersede state arbitration rules in diversity cases.[vi] The decision also made arbitration clauses "severable" from the rest of contracts, allowing arbitrators to review "fraud in inducement" defenses to breach claims rather than courts.[vii] *Prima* would be the first in a long line of Supreme Court cases that gradually established modern "liberal enforcement" of contractual arbitration clauses.[viii] Hugo Black opposed every aspect of *Prima*. In a dissent longer than the opinion, he described it as a "statutory mutilation" which unacceptably delegated legal defenses to biased arbitrators.[ix]

Black's arbitration opposition stemmed from his time in the legislature, where he witnessed how special interests influenced the passage of statutes like the Federal Arbitration Act. During Black's 12 years in the Senate, he saw "high-powered, deceptive, telegram-fixing, letter-framing, Washington-visiting [lobbyists]"[x] defeat his attempts to provide municipal power to impoverished

Alabama towns,[xi] and push for endless exemptions to his Black-Connery bill, which became the basis for the Fair Labor Standards Act.[xii] For Black, experiences like these displayed how special interests could manipulate politics to entrench their own power.[xiii] Black's belief in this dynamic contributed to his skepticism of the FAA. Passed just one year before his arrival in the Senate, the FAA addressed American courts' then refusal to enforce contractual agreements to arbitrate.[xiv] Early common-law courts believed that parties could not "oust" the court of its jurisdiction through private agreement.[xv] The FAA ended this "ouster doctrine" by making arbitration clauses "as enforceable as other contracts – no more no less."[xvi] Many of the bill's congressional advocates intended for the law to have a narrow scope.[xvii] Yet Black knew its effect could expand past their intent. The FAA emerged at the tail end of a long pro-arbitration lobbying campaign drawing its "principal support from trade associations…[and] commercial and mercantile groups in the major trading centers."[xviii] To Black, the support of these groups–the same ones who opposed his New Deal reforms–indicated that the statute principally benefited entities with enough bargaining power to use arbitration clauses to preclude legal claims.[xix] For a former Birmingham trial lawyer who believed in the value of juries',[xx] it would be unconscionable to apply the statute in a way that waived an individual's right to their "day in Court" by the stroke of a pen. Yet, despite Black's best efforts, the Warren Court effectively allowed this to occur in *Prima Paint*.

II. Roadmap

This paper establishes Hugo Black as one of the Supreme Court's foremost critics of mandatory arbitration. It also, for the first time in the literature, examines historical materials related to the Warren Court's arbitration jurisprudence, tracing how the Court moved from support of Black's arbitration views in the early 1950s to a break with them by the late 1960s. First, it displays how the Warren Court shared Black's arbitration skepticism in 1953's *Wilko v. Swan*,[xxi]

even as Black pushed the Justices to express more disapproval of the practice. Next, it shows how the Court moved away from Black in 1963's *Moseley v. Electronic & Missile*,[xxii] where it declined to rule on whether claims brought under the Miller Act could be arbitrated. A Court with different personnel, and stated policies in favor of employer-union arbitration, displayed far less reticence about statutory claim arbitration than the 1953 Court did. Yet *Moseley* also saw the Justices hesitate, shirking back from allowing full arbitration of Miller Act claims, or arbitral review of fraud in inducement defenses to contract formation, in part due to heavy lobbying by Black. Then, the paper reviews 1967's *Prima Paint v Flood & Conklin*,[xxiii] its status as a proxy battle for the Second Circuit case *Robert Lawrence Co. v. Devonshire Fabrics*,[xxiv] and how Black attempted to refute both cases in his venomous dissent.[xxv] *Prima* saw Black's arbitration views get firmly rebuked by a majority looking to leave behind the Court's previous hostility to the practice. The paper concludes by reviewing how Black's arbitration views can be seen as one part of a larger theme in his jurisprudence: strong defenses of the constitutional right to a fair "day in Court" from powerful forces which could abrogate it.

III. *Wilko v. Swan* – "I Certainly Have Plenty of Biases"

The early Warren Court shared Black's antagonism towards mandatory arbitration in 1953's *Wilko v. Swan*. Anthony Wilko was induced by his stockbroker to buy 1600 shares of Air Associates common stock based on fraudulent assurances that they would increase in value.[xxvi] He resold two weeks later at a $3888 loss.[xxvii] Wilko sued the brokerage under § 12(2) of the 1933 Securities Act.[xxviii] The firm moved for a stay, asserting that their relationship was governed by contracts providing that any dispute would be determined through binding arbitration.[xxix] Judge Henry Goddard of the Southern District of New York denied their motion,[xxx] but a divided Second Circuit reversed, holding that parties could agree to arbitrate a dispute in advance in the same way

that parties could choose to settle.[xxxi] Judge Charles Clark argued in dissent that a binding arbitration clause in a stock purchase agreement implicitly waived § 22 of the Securities' Act's provision of a federal forum to securities buyers. This violated § 14 of the Act, which voided any waiver of compliance with its substantive requirements.[xxxii] Clark also argued that pre-dispute arbitration agreements contravened Securities Act policy by making purchaser's rights "capable of nullification by…fine-print restrictions of the broker's devising."[xxxiii]

The Court granted *certiorari* in *Wilko* on June 1, 1953.[xxxiv] The case held major implications for arbitration's future. The FAA prompted many lower courts to abandon their previous hostility to the practice.[xxxv] Arbitration clauses were becoming *de rigueur* in adhesion contracts; some 90% of stock brokerages required arbitration of customer-broker disputes by 1953.[xxxvi] Yet it remained on shaky legal ground. Some courts still refused to enforce arbitration agreements.[xxxvii] Questions remained about which statutory claims could be arbitrated.[xxxviii] Early Supreme Court cases interpreting the FAA only dealt with the Act in relation to maritime law and were inapposite on these issues.[xxxix] *Wilko* represented a turning point. A ruling in favor of arbitration could expand it to a wider range of claims and contracts. A decision against it could require "almost every [stockbroker] margin contract…to be rewritten."[xl]

Unfortunately, Anthony Wilko was not ready to litigate his important case. Wilko was broke; his counsel did not file a brief with the Second Circuit,[xli] and he proceeded *in forma pauperis* at the Supreme Court due to "losses sustained in [the] transaction."[xlii] So the S.E.C., wanting to ensure vigorous Securities Act enforcement, entered the fray. The agency filed an *amicus* brief[xliii] that Wilko's counsel deferred to,[xliv] participated in oral argument,[xlv] and made itself the dispute's "primary party."[xlvi] The agency's arguments echoed Judge Clark's dissent; pre-dispute agreements to arbitrate Securities Act § 12(2) claims were a void waiver of the statute's provision of a federal

venue,[xlvii] and arbitrating these claims frustrated purchasers' statutory rights because arbitrators would act "according to their business background" rather than in plaintiffs' interest.[xlviii] The broker's brief pointed to the lack of specific exemptions for Securities Act claims in the Federal Arbitration Act's text.[xlix]

Wilko receded into conference on December 9, 1953,[l] where Justice Hugo Black was among the first to speak.[li] Black stated that the case came down to a conflicting presumption between the Arbitration and Securities Acts. Yet here, the Securities Act won out. It guaranteed stock purchasers a federal forum, so they were not bound by pre-dispute arbitration agreements that foreclosed this right.[lii] He also expressed approval of Judge Clark's dissent, and its holding that arbitration of Securities Act claims could frustrate their enforcement.[liii] Yet Justice Stanley F. Reed pushed back, arguing that the Court could not hold that arbitration was unable to vindicate statutory rights.[liv] William O. Douglas, Harold H. Burton, and the newly appointed Chief Justice Earl Warren voted with Black to reverse, but the rest of the Court went with Reed.[lv] After conference, *Wilko* was a 5-4 vote in favor of pre-dispute arbitration of federal statutory claims. Justice Reed was assigned the majority opinion.[lvi]

Wilko almost vastly expanded the Federal Arbitration Act's reach in the 1950s, until Justice Reed underwent a change of heart. After a series of tortured drafts,[lvii] Reed wrote the Court on November 20 saying that "further consideration" of *Wilko* lead him to change his mind.[lviii] He circulated a new memo which later became the majority opinion.[lix] Reed's memo showed his vacillation, writing that "two [statutory] policies, not easily reconcilable, are involved in this case."[lx] Yet it ultimately endorsed Justice Black's position at conference: pre-dispute arbitration agreements waived purchasers' right to proceed in federal court in violation of § 14 of the

Securities Act, and Congress's goal of creating an efficient cause of action for defrauded purchasers was "better carried out" by making those agreements unenforceable.[lxi]

Reed's reversal made *Wilko* a defeat for arbitration, but a win for Hugo Black. Black approved of Reed's new draft, writing Reed two days after it circulated that he was "glad he came out that way."[lxii] However, Black also pushed Reed to make his draft even harsher on arbitration. Where Reed took pains to state "the Federal Arbitration Act establishes the desirability of arbitration as an alternative to the complications of litigation," Black noted that "arbitration can be just as complicated [as litigation]" and "its usefulness has been greatly exaggerated."[lxiii] Where Reed ended by "discounting...any bias that we as judges…have for the judicial process as against arbitration..." Black wrote "I certainly have plenty [of biases against it] insofar as a man's right to sue is to be governed by law rather than by contract where bargaining power of the parties' is essentially unequal."[lxiv]

Reed did not adopt Black's rhetoric, but his final opinion relayed Black's views on the case.[lxv] It also won a 6-2 majority, as Tom Clark switched his vote from conference,[lxvi] and Robert Jackson concurred in the judgement.[lxvii] Even the case's dissenters, Felix Frankfurter and Sherman Minton, admitted some questions about arbitration. While Frankfurter did not believe that Securities Act claimants would be unable to vindicate their rights in arbitration,[lxviii] he admitted that, if Wilko faced no choice but to assent to this clause, then it could be unconscionable.[lxix] The Court went from allowing Securities Act arbitration at conference to expressing unanimous skepticism about its use in this context. However, the Court's good days of agreement on arbitration[lxx] were coming to an end.

IV. *Moseley v. Electronic & Missile* – "No Room for Halfway Decisions"

After *Wilko*, the Warren Court next addressed the Federal Arbitration Act's application to a statutory claim in 1963's *Moseley v. Electronic & Missile*.[lxxi] *Moseley* involved a federal subcontractor who brought a damages claim against their general contractor under the Miller Act,[lxxii] which grants subcontractors that cause of action.[lxxiii] The prime contractor filed a motion to compel arbitration under their agreement's terms.[lxxiv] The Middle District of Georgia enjoined the arbitration because the subcontractor raised a colorable fraud in inducement defense which the federal court had to resolve.[lxxv] Judge Elbert Tuttle reversed for a divided Fifth Circuit, holding that the FAA "expressly and unequivocally" conferred a right to arbitrate disputes.[lxxvi] In addition, Judge Tuttle held that the arbitrator, rather than the federal court, could litigate the fraud in inducement defense.[lxxvii] In making this holding, the Fifth Circuit adopted the reasoning of a recent Second Circuit case called *Robert Lawrence v. Devonshire Fabrics*.[lxxviii] *Devonshire* saw Judge Harold Medina hold that the FAA was a substantive statute which precluded state arbitration law,[lxxix] and, where a plaintiff raised fraudulent inducement as a defense to a motion to compel arbitration, arbitrators' could review the fraud claim unless their defense centered *specifically* on the arbitration clause.[lxxx] *Devonshire* was a major step towards expanding the FAA.[lxxxi] Its importance was not lost on the Supreme Court, who granted a writ of *certiorari* to the case in 1960,[lxxxii] only to see it dismissed after a settlement.[lxxxiii]

The Court granted a writ of *certiorari* in *Moseley* on December 3, 1962.[lxxxiv] This grant followed a split 4-5 vote, with Byron White and Arthur Goldberg switching their initial votes[lxxxv] due to the "important question of the availability of commercial arbitration under the Miller Act."[lxxxvi] Only Earl Warren and Hugo Black voted to grant the writ the entire time.[lxxxvii] Black likely did so because *Moseley* represented another chance to preclude arbitration of federal statutory claims. Both sides in *Moseley* raised similar arguments to those from *Wilko*. Petitioner

argued that allowing Miller Act arbitration negated the statute's federal forum and impaired enforcement;[lxxxviii] respondent focused on the FAA's lack of specifically enumerated exceptions for Miller Act claims.[lxxxix] Yet *Moseley* also presented other issues which were not raised in *Wilko*. The case involved questions about whether interstate commerce was involved,[xc] the inherent unfairness of forcing a Georgia subcontractor to arbitrate their claim in New York,[xci] and the question of whether the fraud in inducement claim had to be litigated by the federal court, or if the arbitrator could resolve the issue.[xcii] On this issue, respondent's brief, just like the Fifth Circuit, approvingly cited *Devonshire*'s holding that "arbitration is not barred by an assertion that the entire contract was induced by fraud; there must be a specific claim that the arbitration provision itself was fraudulently procured."[xciii]

At oral argument, Hugo Black made clear that he believed all *Moseley*'s issues should be resolved one way: against arbitration. When respondents' counsel argued that the Miller Act was a "venues statute which could be waived," he asked sarcastically, "do you think [Congress] left [claims] to that [federal] forum without saying anything?"[xciv] Black also challenged respondents' argument that arbitration must take place in New York, stating that a ruling in their favor required the Court "to hold that 435 members of Congress…passed [the FAA] intending that [a] man in South Georgia could waive his right to have his case tried under the Miller Act in South Georgia, and must go all the way to New York or to London...Or to Switzerland...in order to try his case."[xcv] Black also implied that the subcontractor had the right to have the federal court, not the arbitrator, decide the fraud claim. As Black said, "the books are filled with cases that people have been defrauded by written contracts," and courts had a right to review them.[xcvi]

Black voted to reverse at *Moseley*'s April 19 conference, although his specific comments are not recorded.[xcvii] Earl Warren also voted to reverse, "[agreeing] with" Black that Miller Act claims

could not be arbitrated.[xcviii] However, their position found no other supporters. Byron White and Tom Clark only said that the case involved "interstate commerce" and so was covered by the FAA.[xcix] William J. Brennan and Arthur Goldberg made clear that the Miller Act did not preclude arbitration.[c] Justice John Marshall Harlan II even endorsed *Devonshire*.[ci] The entire Court, except for Black and Warren,[cii] held that Miller Act claims were arbitrable, and only modified the lower court's decision by holding that the arbitration should take place in Georgia rather than New York.[ciii] The arbitration hostility which the Warren Court exhibited in *Wilko* now seemed nonexistent, with little explanation as to why.

The Warren Court's shift on FAA arbitration in *Moseley* may have been influenced by its recent endorsement of arbitration between employers and labor unions. Labor arbitration developed separately from commercial arbitration,[civ] and was a widely-used "middle-class panacea" for labor conflict by the 1950s.[cv] The Court expressed approval of the practice in 1957's *Textile Workers Union v. Lincoln Mills*,[cvi] holding that § 301 of the Labor Management Relations Act generated a "congressional policy" in favor of labor arbitration.[cvii] It reaffirmed this support three years later in a trio of cases known as the "*Steelworkers* trilogy,[cviii] holding that *Wilko*'s "hostility" to arbitration arose where it was "the substitute for litigation."[cix] In the labor context, arbitration was "the substitute for industrial strife." Courts should encourage this more peaceful practice by resolving "doubts [as to enforceability] … in favor of coverage."[cx]

Hugo Black did not participate in the consideration or decision of *Lincoln Mills* or *Steelworkers*.[cxi] He never endorsed their reasoning, but also never expressed disapproval. He also voted to enforce some labor arbitration clauses in cases deferring to *Steelworkers*.[cxii] This was not surprising. Black was a workers' rights advocate dating back to the New Deal.[cxiii] In theory, labor arbitration served worker's interests by encouraging employers to enter collective bargaining

agreements. Yet Black's pro-labor sentiments did not prevent him from becoming the Warren Court's preeminent employer-union arbitration skeptic in the early 1960s. In case after case, Black accused the court of letting their "leanings to treat arbitration as an almost sure and certain solvent of all labor troubles" override other issues with granting enforcement."[cxiv] However, he almost always dissented alone.[cxv] This Warren Court, and its new appointee Arthur Goldberg in particular, favored unions,[cxvi] and the unions supported labor arbitration.[cxvii] The Justices were not going to endorse Black's stubborn opposition to labor's "new kingpin."[cxviii] Of course, until 1963, the Court's arbitration endorsement remained centered on the employer-union context. *Moseley*'s conference indicated how easy it might be to extend the Court's warm feelings on labor arbitration to arbitration of statutory claims.[cxix]

However, conference was not the end of deliberations in *Moseley*. Black soon began looking to exert influence with the other Justices. On April 22, three days after conference, Black sent a letter to the Court suggesting that a ruling in favor of the general contractor in *Moseley* would require them to overturn their precedent.[cxx] The next day, Black wrote a letter to Justice Arthur Goldberg.[cxxi] Hoping to "at least…get [Goldberg] to look closely at [*Moseley*]'s materials,"[cxxii] he played on the Justice's pro-labor sympathies. Black wrote Goldberg that "I read the legislative history of the [FAA] last night…[That] Act was drafted and promoted by merchants and was intended to meet their particular needs. The Arbitration Act could not have been passed but for assurances…that its arbitration system could not be applied to industrial workers and employment contracts…This is one of the many reasons why I said to you in re *Moseley* that there is no room for halfway decisions. Whether you are right or wrong in believing that arbitration of labor disputes is a highly desirable public policy, I am convinced by the history and language of the Arbitration Act that it would be a complete distortion…to hold that it applies to employment contracts..."[cxxiii]

Black would not stop there. On May 31, 1962, he circulated a massive memo to the Court explicitly outlining his views on arbitration, and arguing for a reversal in *Moseley*.[cxxiv] This memo included a range of arguments: allowing arbitration of Miller Act claims could increase public works' expenditures,[cxxv] the transaction did not involve "interstate commerce,"[cxxvi] and any arbitration which takes place should occur in Georgia, not New York.[cxxvii] Black also attacked the lower court's endorsement of *Devonshire*, and its holding that fraud in inducement claims could be decided by an arbitrator rather than a federal court.[cxxviii] *Moseley*'s subcontractor made colorable allegations of fraud. § 4 of the FAA stated that a court must be satisfied that the "*making* of the agreement for arbitration…is not in issue" in order to enforce an agreement.[cxxix] Black, ever the textualist, pointed out that a fraud in inducement claim necessarily puts the "making" of an agreement at issue. He also pointed to statements by FAA sponsors stating that courts must hear "all defenses, equitable and legal" which could exist before enforcing arbitration agreements; this would encompass fraud in inducement. [cxxx]

Black's memo primarily centered on two arguments that were central to his view of arbitration: a statutory grant of a federal forum could not be waived through pre-dispute contracts involving unequal bargaining power,[cxxxi] and allowing arbitration of statutory claims could frustrate their vindication.[cxxxii] Black supported his first claim by pointing out how *Moseley*'s federal contractor, who essentially possessed a monopsony after the contract was granted, imposed this venue waiver on a subcontractor without leverage. The court could not hold that the subcontractor truly assented to this dispute resolution method given how "theoretical equality of opportunity to bargain at arm's length is often a fiction in our world of commercial reality."[cxxxiii] Enforcing the waiver was even more objectionable in the context of the Miller Act, which was "meant to guard against the evils resulting from inequality of bargaining power" between these

parties.[cxxxiv] Black made his second argument, that arbitration of statutory claims impaired enforcement, by looking at the FAA's history. Drawing on his Senate experience, he pointed out that the statute "must be interpreted in light of the [large business interests] of the bill's supporters."[cxxxv] The FAA was drafted by, and principally benefited, large mercantile groups. Its enacting legislature intended for it to only apply to simple contractual disputes within that community.[cxxxvi] They certainly did not intend for it to apply to captive consumers, employees, or subcontractors.[cxxxvii] Here, perhaps understanding the gap between him and the rest of the Court on labor arbitration, Black also distinguished *Moseley* from that context; "it does not follow that because [labor] arbitration has value in such situations the [FAA] should be construed to cover any and all areas…heedless of the commands of other statutes designed to preserve the ancient, treasured right to judicial trials."[cxxxviii] Then, he again related this arbitration back to the corrupt intent of the FAA's drafters: "we should be especially careful not to apply the Arbitration Act sweepingly in view of the avowed purpose of its proponents to do away with the constitutional right to trial by jury."[cxxxix] Citing a statement by one of the bill's drafters, stating that one of the "evils" it was intended to address was the failure of non-expert juries to reach decisions "regarded as just…by the standards of the business world,"[cxl] Black warned that they should look carefully at a bill "intended to do away with what its supporters called an 'evil' but the Constitution calls a 'right.'"[cxli]

Black was moving mountains to make the Court see his view. At first, they appeared to be having none of it. Tom Clark's early drafts ignored most of Black's arguments.[cxlii] They rejected his view that the Miller Act's federal venue could not be waived. There was no enumerated arbitration exception in the Miller Act, and the FAA "deemed [arbitration] to be in furtherance of, rather than detrimental to, the public interest."[cxliii] Upon reading Clark's draft on June 3, Black

prepared to make his memo a dissent.[cxliv] Yet Black's memo may have slowly influenced the rest of the Court. Clark noted on one draft that "Black is the only one who would…reverse the Court of Appeals…the Justice and the others agree with the Arbitration point made by Black. But they think the DC could go on to decide the other points in the contract..."[cxlv] This indicates that Black's arbitration memo was getting some traction. Other justices were also taking issue with Clark's draft. Goldberg wrote him that "I am generally in agreement with…the result you have reached, but the route you have taken to get there…troubles me,"[cxlvi] while Douglas noted that they should perhaps remand to the District Court instead of the arbitrator.[cxlvii] Eventually, all these issues got to Tom Clark. On June 5th, Clark sent Douglas a short note written on a flashcard: "I have been talking to the brothers and they are convinced that we do not need to reach the arbitration issue. It was not an issue as to enforceability below as the respondent did not pray for anything other than a stay. I have therefore…eliminated this part of the opinion." Knowing how this would affect their anti-arbitration colleague, Clark added, "I suppose this will cause Hugo to pull my hair out but I believe that it is right."[cxlviii]

Moseley came down on July 11, 1962 as a very short opinion.[cxlix] It did not rule on the arbitrability of Miller Act claims, whether the case involved interstate commerce, or any of its other issues. It only remanded to the lower Court to determine the subcontractor's fraud in inducement defense.[cl] Black's vast memo was shaped down to a short concurrence joined only by Warren.[cli] The concurrence pointed out the questions which the opinion left open but approved of the decision to remand to the District Court. It also cast enmity towards *Devonshire*, and its allowance for arbitrators to review fraud in inducement claims; "fraud in the procurement of an arbitration contract makes it void and unenforceable and this question of fraud is a judicial one which must be decided by a court."[clii]

Moseley displayed that this Warren Court had very different arbitration views than the one which decided *Wilko*. Gone were Reed's reversals, Jackson's protection of judicial review for arbitral decisions, Burton's concerns about arbitrator bias,[cliii] or even Frankfurter's admission that some arbitration clauses could be unconscionable. In their place were justices with more positive views of the practice. William Brennan pushed for arbitration as a labor lawyer.[cliv] John Marshall Harlan II's endorsement of *Devonshire* in conference indicated that he was an advocate of it.[clv] Byron White went on to join FAA decisions which went farther than the Warren Court would.[clvi] Even Black's old allies appeared to be reversing their earlier positions. Tom Clark was always unpredictable.[clvii] William Douglas was strongly in favor of labor arbitration, having written the opinions in *Lincoln Mills*[clviii] and *Steelworkers*,[clix] and voted with the majority in *Moseley*. Even Earl Warren, who did vote with Black, tended to care more about getting the "right" result than following a consistent reasoning.[clx] However, *Moseley* probably did not make Black "pull out" anybody's hair. He may have just breathed a sigh of relief. The final opinion did not oppose Miller Act arbitrability, but it did not endorse it. The Court still remanded to the District Court, not the arbitrator, to determine the subcontractor's fraud defense.[clxi] This defeated any Supreme Court endorsement of *Devonshire*. Black could call this one a draw. Yet the war over *Devonshire* was not over.

V. *Prima Paint* – "Un-American Procedures"

In October 1964, Flood & Conklin Manufacturing Co. entered a "Consulting Agreement" with Prima Paint Corp. to facilitate Prima's purchase of F&C's paint business.[clxii] The agreement provided that F&C's chairman would furnish "consultation" in connection with the business transfer in exchange for a percentage of Prima's sales receipts. Their agreement included a broad arbitration clause.[clxiii] In early 1965, Prima Paint's first payment to F&C did not arrive when due.

Seventeen days later, Prima Paint notified F&C's attorneys that F&C breached their contract by fraudulently representing that they were solvent when they intended to file a bankruptcy petition.[clxiv] On November 12, the company filed a diversity lawsuit in the Southern District of New York seeking rescission of the contract based on fraudulent inducement.[clxv] F&C cross-moved for a stay pending arbitration, arguing that any question as to fraud in inducement was for the arbitrators and not the District Court.[clxvi] The District Court granted F&C's motion.[clxvii] The Second Circuit affirmed, holding that, under their *Devonshire* precedent, a broad arbitration clause made any defense of fraud in inducement in the entire contract, rather than just the arbitration clause, one that arbitrators' could review.[clxviii] Although New York law would command a different result, the FAA's "national substantive law" superseded that state rule.[clxix]

Prima Paint filed a petition for *certiorari* in August of 1966.[clxx] White, Stewart, Harlan, Warren, and Black all voted to grant the writ.[clxxi] The reason for Black's vote can be surmised. *Prima* "raised the same issues"[clxxii] as *Devonshire*: whether the FAA was a substantive statute, and whether arbitrators could decide fraud in inducement defense. *Prima* was a great chance for Black to strike down both those holdings. Indeed, the party's merits briefs in *Prima*, as well as an *amicus* brief filed by the American Arbitration Association on respondent's behalf,[clxxiii] generally addressed the same matters that *Devonshire* ruled on.[clxxiv] Oral argument in the case made even more clear that, for Black at least, *Prima* was a proxy battle on *Devonshire*. Black was silent for most of Prima Paint's argument in favor of referring their fraud claim to the District Court. However, when Flood & Conklin's lawyer, one Martin Coleman, arrived to endorse *Devonshire*, Black sent him a string of stern rebukes.[clxxv] At one point, Coleman asserted that the FAA was meant to eliminate common law courts' "hostility to arbitration on the theory that it divested courts of its jurisdiction…" Black interrupted, "which it does." Coleman admitted that it did but added

that Congress "passed [the Federal Arbitration Act" in derogation of the common law." Black responded, "Which was subjected to charges that it was unconstitutional." Coleman said, in a sheepish tone, "I don't believe so, your honor..."[clxxvi] Later, when Gerald Aksen of the American Arbitration Association, took the stand, Black tied up the lawyer in questions about–of all things–AAA's founding date.[clxxvii]

Prima would be a close case at its March 17 conference.[clxxviii] Earl Warren was the first to speak.[clxxix] One would imagine that Warren would vote to reverse. After all, a vote to affirm in *Prima* was a vote in favor of *Devonshire*, and Warren was the *only* Justice who joined Black's *Moseley* concurrence specifically refuting that case. Yet Warren voted to affirm without much explanation, only making a conclusory statement that the FAA created federal substantive law that applied in diversity cases.[clxxx] Black voted to reverse without any recorded explanation, as did Douglas.[clxxxi] Justice Harlan, who already endorsed *Devonshire* during *Moseley*'s Conference, voted to affirm, reiterating that Congress enacted the FAA as a substantive statute under its Commerce Clause Power. Potter Stewart began a long talk about how they may need to return to the FAA's limited original intent. His view of the case was unclear; Douglas originally wrote down that Stewart wanted to affirm, but later switched Stewart's vote to a reversal.[clxxxii] The last three justices, White, Abe Fortas, and Brennan, all voted to affirm without much discussion. *Prima* left conference as a 6-3 vote in favor of Flood & Conklin and *Devonshire*. Fortas was assigned the majority opinion.[clxxxiii]

Abe Fortas began drafting a terse majority opinion for *Prima*.[clxxxiv] First, the contract "[evinced] a transaction in interstate commerce" for FAA purposes; this was a Maryland corporation buying a New Jersey business.[clxxxv] He then turned to the case's central issue of whether arbitrators could review fraud in inducement defenses. Fortas referred to § 4 of the FAA,

which lays out that a federal court can only enforce arbitration clauses once it is satisfied that "the *making* of the agreement for arbitration or the failure to comply (with the arbitration agreement) [was] not in issue [emphasis added]."[clxxxvi] For Fortas, the way that "making" related to "agreement for arbitration" meant that "a federal court may consider only issues relating to the making and performance of the [actual] agreement to arbitrate."[clxxxvii] Federal courts could only review fraud in inducement challenges to contracts containing arbitration clauses when the challenge centered on the specific clause rather than the entire contract.[clxxxviii] Fortas also held that the FAA was a substantive statute which authorized federal courts to generate rules of decision in diversity cases.[clxxxix] He then pushed Prima Paint's dispute with F&C into arbitration, because their fraud defense centered on the entire contract, rather than the arbitration clause.[cxc]

Fortas's opinion was short and direct, almost to the point of curtness. Its central holding and arguments remained the same throughout the editing process, although its specific language and structure did change somewhat.[cxci] The case would not completely affirm *Devonshire*,[cxcii] but enshrined its three central holdings: the FAA was substantive law, arbitration clauses were "separable," and fraud-in-inducement defenses could be reviewed by arbitrators. After *Prima* circulated, Warren, Clark, and Brennan joined Fortas's draft without the slightest comment.[cxciii] Byron White did the same with just one edit. White asked Fortas if he needed a footnote pushing federal courts presiding over diversity cases to at least consult state law whenever it significantly conflicted with the federal rule.[cxciv] Fortas responded that "he was inclined to strike" the footnote, and only included it because of the "bitchy problem" of his "[general] inclination…to reduce federal law–to use state substantive rules unless there is a pretty clear and strong reason to apply federal law…Otherwise e.g. there might be a different standard in inducement of the arbitration clause and fraud-in-inducement of the contract itself."[cxcv] Fortas's evident issues with his own

holding did not prevent him from cutting that footnote.[cxcvi] For the majority, *Prima* was to be a short decision which firmly established the Federal Arbitration Act's power over states and fraud defenses. To quote Black in *Moseley*, there was "no room for half-measures."[cxcvii]

Black began drafting a dissent by hand after reading Fortas's opinion. His words were vicious from the start: "The Court here holds to me what it is fantastic, that the legal issue of the contracts voidness because of fraud is to be decided by persons designated to arbitrate the factual controversy between the contracting parties…the arbitrators the Court holds are to adjudicate the legal validity of the contract…in all probability will be non-lawyers wholly unqualified to decide legal issues. I am by no means sure that forcing persons to forego their opportunity to [try] their legal issues in the courts denies them due process. I am fully satisfied that Congress did not impose any such un-American procedures in the Arbitration Act."[cxcviii] Black's dissent grew from this intro. He first attacked *Prima*'s central holding that arbitrators could rule on fraud in inducement defenses. Displaying the consistency of his arbitration views, Black made this argument by reiterating arguments developed in his earlier *Moseley* memo: a colorable fraud accusation put the "making" of the contract, and any arbitration clause contained within it, into issue.[cxcix] He also pointed out that the Court's holding contravened the institutional competency of courts' and arbitrators. Arbitrators could quickly resolve disputes related to day-to-day contractual performance.[cc] Yet courts had more expertise in fraud proceedings and could "determine with little delay" that arbitration should proceed if claims were specious.[cci] Black closed at his most pointed: "the only advantage of submitting the issue of fraud to arbitration is for the arbitrators. Their compensation corresponds to the volume of arbitration they perform. If they determine that a contract is void because of fraud, there is nothing further for them to arbitrate. I think it raises

serious questions of due process to submit to an arbitrator an issue which will determine [their] compensation."[ccii]

Black's dissent did not only respond to *Prima*. The Justice also took aim at the case to which he gave "credit for the creation of a rationalization to justify this statutory mutilation": *Devonshire*.[cciii] Black described *Devonshire*'s holding that the FAA was enacted as substantive law as a ploy to avoid the statute's "emasculation" by states.[cciv] He cited a number of statements from the FAA's legislative history stating that the bill was "establishing a procedure,"[ccv] and "does not involve any new principle of law."[ccvi] He also pointed out that the FAA does not provide an independent federal-question basis for jurisdiction.[ccvii] He then related his *Devonshire* attacks back to the majority opinion. The FAA just placed arbitration agreements "on the same footing as other contracts."[ccviii] The Court's new separability rule made arbitration clauses *supreme* over other contracts, which required rescission-in-whole rather than in "tidbits."[ccix] Black closed by arguing that the Supreme Court, in following *Devonshire*, a case "whose creator practically admitted was judicial legislation," was just looking to "promote the policy of arbitration."[ccx]

Black's dissent circulated on June 1.[ccxi] Fortas's notes on the draft were incredulous. He reiterated that he viewed the FAA's language on the "making" of the agreement as only "pertaining to the arbitration clause."[ccxii] In response to Black's claim that courts had more expertise with fraud claims than arbitrators, he pointed out that "a lot want [non-expert] juries to decide it."[ccxiii] At one point, when Black quoted one of the FAA's private-sector drafters as to the bill's intent, Fortas wrote "this is the sponsor?...They're just lobbyists."[ccxiv] Perhaps one of the other Justices spoke to Black about toning down his rhetoric. The next day, Black recirculated the draft with one descriptor removed: "un-American."[ccxv] Yet the diplomatic Harlan also wrote Fortas the day after Black's draft circulated: "in view of Hugo's strong treatment, you might wish to consider, if time

permits, a more full-dress exposition of the majority side..."[ccxvi] Fortas did edit his opinion in subtle ways, such as taking more time to substantiate his holding that the FAA was a substantive law enacted under the Commerce Clause.[ccxvii] Black responded by adding his own footnote saying that Fortas's evidence showed that the Act applied to commerce generally, but did not reflect a Congressional intent to enact the FAA under the Commerce power.[ccxviii] Black's dissent was immediately joined by Potter Stewart.[ccxix] Within a week of its circulation, William Douglas joined it as well.[ccxx] Yet none of the justices who voted against Black at conference switched their vote.

The Court issued *Prima Paint* on June 12, 1967.[ccxxi] Added in was a short concurrence from Justice Harlan explicitly endorsing *Devonshire* over the majority's slightly different reasoning.[ccxxii] Reaction to the case was muted, as is usually the case for arbitration decisions. The decision impacted some federal litigation.[ccxxiii] A Law Review article questioned whether it withheld too much power from courts.[ccxxiv] Only one group truly celebrated it: the corporate law community. *The Business Lawyer* vigorously applauded *Prima*'s expansion of the scope of contractual arbitration clauses.[ccxxv] After decades of lobbying, big business was finally getting the liberal arbitration grants they always sought.

It is notable that *Prima*'s written record does not reveal the kind of active lobbying by Black, through letters to "swing" justices or "memos for the conference," that occurred in *Moseley*. It is possible that deliberations occurred outside the written record. However, it is also possible that, by this point, Black knew how unpopular his positions were becoming. Arbitration had been pushed by the business community for a long time.[ccxxvi] Courts were more accepting of the practice.[ccxxvii] Given how close-run deliberations over *Wilko* and *Moseley* were, he may have been lucky to keep a case like *Prima* away for as long as he did. It certainly did not help that *Prima* arrived when Black was growing increasingly old, reserved, and out of touch with the rest of the

Court.[ccxxviii] By 1967, younger justices like William Brennan were becoming the main driver of majorities.[ccxxix] Black increasingly took the role of a silent, elder statesman. He remained a keen advocate for his old positions but was increasingly unable to bring new people over to them.[ccxxx] In addition, it should be noted that arbitration was, and remains, an extremely low-salience issue. The Warren Court took on a wide number of issues with greater importance to the press, historians, and most of the Justices - race, religious liberty, freedom of speech. Compared to all these, a paint company's choice of forum for their fraud defense may have barely registered for the rest of the Justices. For all the Justices, that is, except Hugo Black.

V. Conclusion – *Prima* to *Gideon*

Black's views on arbitration are best understood as one manifestation of the Justice's broader interest in protecting each individual's constitutional right to a "day in court." Black truly believed in the virtues of neutral courts with strong procedural protections and juries of one's peers. That belief shines through his written arbitration materials. Black's notes on Reed's *Wilko* opinion, his *Moseley* memo, and the *Prima* dissent, consistently express the view that arbitration should not be allowed to erode individuals' constitutional right to bring claims in a court of law. Of course, the rest of the Warren Court also defended the right to trial.[ccxxxi] Yet, in *Prima*, a majority still voted to facilitate possible banishment of legal claims to private forums run by individuals with compromising financial interests. Only Black, the former trial lawyer and New Deal senator, truly understood how arbitration could abridge that right, and fought against it in every case he could. Black's attempts to do so are consistent with the rest of his decisions on the Warren Court. Indeed, certain sections of the *Moseley* memo, such as the statement that the FAA should not be construed to take away the "ancient, treasured right to judicial trials in independent courts according to due process of law,"[ccxxxii] recall a more famous Black quote from a more

famous decision: "our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law."[ccxxxiii] For Hugo Black that precious right to a fair trial should not be taken away through a mere signature on pre-drafted paper.

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[i] *See* Local 174 Teamsters, Chauffeurs, Warehousemen & Helpers of America, v. Lucas Flour Company, 369 U.S. 95, 107-10 (1962); James B. Carey, as President of the Int'l Union of Electrical, Radio & Machine Workers, AFL-CIO v. Westinghouse Electric Corp., 375 U.S. 261, 274-76 (1964) (J. Black dissenting), Republic Steel Corp. v. Charlie Maddox, 379 U.S. 650, 660-70 (1965) (J. Black dissenting); Florence Simmons v. Union News Co., 382 U.S. 884, 884-88 (1965) (J. Black dissenting); Manuel Vaca et al. v. Niles Sipes, Administrator of the Estate of Benjamin Owens, Jr., Deceased., 386 U.S. 171, 204-10 (J. Black dissenting) (1967) Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 407-25 (1967) (J. Black dissenting). *See also*, Sinclair Refining Co. v. Semuel M. Atkinson et al., 370 U.S. 370, 370 (foreclosing federal court injunctions against strikes even when utilized to enforce mandatory arbitration agreements within collective bargaining agreements in a majority opinion by Black); Commonwealth Coatings Corp., v. Continental Casualty Co., et al., 393 U.S. 145, 145 (1968) (holding that courts could set aside arbitral awards were relevant financial biases were not disclosed through a decision in an opinion by Black); H.W. Moseley v. Electronic & Missile Facilities, Inc., et al., 374 U.S. 167 (1963) (discussed *infra* at p. 10-21).

[ii] *See*, *e.g.*, *Republic Steel*, 379 U.S. at 669 (J. Black dissenting) (arguing against the Court's grant of mandatory arbitration based in part on "a vast difference between [the Court's] philosophy and mine concerning…the role of courts in our country…it was in [Magna Carta] that there originally was expressed in the English-speaking world a deep desire of people to be able to see differences according to standard, well-known procedures in courts. Because of these deepseated desires, the right to sue and be sued in courts according to the 'law of the land' became recognized…); *Prima Paint*, 388 U.S. at 407 (J. Black dissenting) ("I am by no means sure that forcing a person to forgo his opportunity to try his legal issues in the courts where, unlike the situation in arbitration, he may have a jury trial and right to appeal, is not a denial of due process of law.").

[iii] *See* Wilko v. Swan, 346 U.S. 427, 428-29 (1953).

[iv] *See Prima Paint*, 388 U.S. at 395.

[v] 9 U.S.C. § 2.

[vi] *Prima*, 388 U.S. at 404-05. This decision implicitly overruled a 1956 Supreme Court holding that the Federal Arbitration Act was a procedural statute that could "affect the rule of decision," and could violate *Erie R. Co. v. Tompkins* if applied to override contrary state law. *See* Norman C. Bernhardt v. Polygraphic Company of America, Inc., 350 U.S. 198, 198 (1956).

[vii] *Prima*, 388 U.S. at 402-04.

[viii] *See*, *e.g.*, Jean R. Sternlight, *Panacea or Corporate Tool? Debunking the Supreme Court's Preference for Binding Arbitration*, 74 WASH. U. L. Q. 638, 654-59 (1996) (discussing how *Prima* started to expand the FAA's scope); Margaret L. Moses, *Statutory Misconstruction: How the Supreme Court Created a Federal Arbitration Act Never Passed By Congress*, 34 FLA. ST. U. L. REV. 99, 114-23 (relaying how *Prima* paved the way to allow FAA application to states); Pierre H. Bergeron, *At the Crosroads of Federalism and Arbitration: The Application of Prima Paint to Purportedly Void Contracts*, 93 KY. L. J. 423, 426-34 (2004) (discussing *Prima*'s creation of a seperability doctrine for arbitration clauses); J. Maria Glover, *Mass Arbitration*, STAN. L. REV. at 52 n.326 (forthcoming) (last revised: Nov. 6, 2021) *available at* SSRN (discussing *Prima* as the first in a long line of FAA Supreme Court precedent expanding the statute).

[ix] *Prima*, 388 U.S. at 416 (J. Black dissenting).

[x] UNITED STATES SENATE, *Lobbyists,* (Sep. 28, 1987) (last updated 1989) *available at* Perma (quoting Hugo Black's radio address in relation to a bill opposed by private utility lobbyists).

[xi] *See* Virginia Van der Veer Hamilton, *HUGO BLACK: THE ALABAMA YEARS,* Univ. of Alabama Press at 178 (1982) *available at* Google Books.

[xii] *See* Roger K. Newman, *HUGO BLACK: A BIOGRAPHY*, Fordham Univ. Press, 217-18 (1997).

[xiii] *See*, *id.* at 154.

[xiv] *See*, *e.g.*, Insurance Co. v. Morse, 22 L.Ed. 365 at 365 (1874).

[xv] Their holdings followed an ancient common-law doctrine against the practice. *See*, *e.g.*, Vynoir's Case, 8 Co. Rep. 81b et seq. (1609). *See, also*, Steven A. Certilman, *A Brief History of Arbitration in the United States*, N.Y.S. DISP. RESOL. LAWYER 10, 10-13 (discussing arbitration in the early Republic).
[xvi] *See* Julius Cohen & Henry Dayton, *The New Federal Arbitration Law*, 12 VA. L. REV., 265, 270 (1926) (describing the Act's limited intent).
[xvii] *See*, *e.g.*, Moses, *supra* note 8, at 105-12, (describing how the act's supporters did not believe that it would apply to any workers or consumers, and the act's own drafters believed it would not apply to important statutory claims); Hiro N. Aragaki, *The Federal Arbitration Act as Procedural Reform*, 89 N.Y.U. L.R. 1939, 1964-90 (arguing that the FAA was intended only to redress federal court procedural failings court as part of a wider 1930s legal reform movement); Imre S. Szalai, *The Consent Amendment: Restoring Meaningful Consent and Respect for Human Dignity in America's Civil Justice System*, 24 VA. J. SOC. POL'Y & L. 195, 203-07 (describing how the FAA was not intended to apply in state court); Richard Frankel, *The Arbitration Clause as Super Contract*, WASH. U. L. REV., 531, 538-40 (2014) (discussing how the statute was not intended to intrude on state substantive law).
[xviii] *Prima Paint*, 388 U.S. at 409 n.2 (*citing* 50 A.B.A.Rep. 357 (1925)). Black's claim is accurate. *See* Moses, *Statutory Misconstruction*, *supra* note 8 at 101 (relaying how the FAA's principal drafters, Julius Cohen and Charles Bernheimer, were drawn from the New York State Chamber of Commerce, and "organized the support of the national business organizations" in favor of the bill).
[xix] As discussed *infra*, at p. 17-18. These concerns existed in debates over the statute's passage. For example, in committee debates related to the bill, Senator Bill Walsh of Montana raised concerns that arbitration clauses might be imposed by powerful actors on consumers or employees in order to foreclose legal claims. *See* Hearing on S. 4213 and S. 4214 before the Subcommittee of the Senate Committee on the Judiciary, 67th Cong., 4th Sess., 9-11 (1923).
[xx] *See* Newman, *supra* note 12 at 34 (describing Black's "devout belief in the jury system" as beginning during his years in Alabama trial courts); 372 (relaying one of Black's major legal goals as "ensuring a fair trial in accordance with constitutional safeguards").
[xxi] *Wilko*, 346 U.S. at 346.
[xxii] *Moseley*., 374 U.S. at 167.
[xxiii] *See Prima*, 388 U.S. at 388.
[xxiv] Robert Lawrence Co. v. Devonshire Fabrics, Inc., 271 F.2d 402 (2d Cir., 1959).
[xxv] *See Prima*, 388 U.S., 402-25 (J. Black dissenting).
[xxvi] *See Wilko*, 346 U.S. at 428-29.
[xxvii] *See, id.* at 429.
[xxviii] *See* Brief for the Securities and Exchange Comm'n as Amicus Curiae, *Wilko v. Swan*, No. 39, 1953 WL 78482 at *6-8 (1953).
[xxix] *Wilko*, 346 U.S. at 429-30.
[xxx] Wilko v. Swan, 107 F. Supp. 75, 76 (S.D.N.Y., 1952).
[xxxi] Wilko v. Swan, 201 F.2d 439, 439 (2d. Cir., 1953).
[xxxii] *Id.* at 444. (J. Clark, dissenting).
[xxxiii] *Wilko*, 201 F.2d at 446 (J. Clark Dissenting).
[xxxiv] *See* Wilko v. Swan, et al., 345 U.S. 969 (1953).
[xxxv] *See*, *e.g.*, Park Constr. Co. v. Indep. School Dist. No. 32, 296 N.W. 475, 477 (Minn. 1941) (expressing disapproval of the old "ouster doctrine").
[xxxvi] *See*, *Washington Checklist: Supreme Court to Hear Investor's Complaint on His Margin Account*, WALL ST. JOURN., p. 3 (Jun. 2, 1953), *available at* ProQuest Historical Newspapers (citing the New York Stock Exchange for this statistic).
[xxxvii] *See*, *e.g.*, Kulukundis Shipping Co. S/A v. Amtorg Trading Corporation, 126 F.2d 978, 986 (2d Cir., 1942) (refusing to submit a maritime dispute to arbitration).
[xxxviii] *See* Cohen & Dayton, *supra* note 16 at 270 (describing the Act's limited intent).
[xxxix] The Court ruled on four cases related to the FAA before 1953, all of which implicated maritime law. *See* Shanferoke Coal & Supply v. Westchester Service Corp., 293 U.S. 449 (1935); Schoenamsgruber v. Hamburg American, 294 U.S. 449 (1935); Marine Transit Corp. v. Dreyfus et al., 284 U.S. 263 (1932); The Anaconda v. American Sugar Refining Co., 342 U.S. 42, 45 (1944). In one, the Court declined to rule on whether a federal court could compel specific performance of an arbitration agreement which required state arbitration. *See*, *Shanferoke*, 293 U.S. at 452-53. In another, the Supreme Court granted parties' to a maritime transaction the right to proceed in *both* arbitration and federal court. *See*, *The Anaconda*, 342 U.S. at 45.
[xl] *See Supreme Court to Hear Investor's Complaint*, *supra* note TK. *See also*, "Bench Memo," Harold Burton Papers, Library of Congress, Madison Building, Box 224, at *4 (Oct. 21, 1953). (expressing worries that allowing

arbitration clauses in stock purchase agreements would allow the "trade to avoid the statute by sticking it in a clause requiring disputes to be arbitrated by their own boys.") [hereinafter "Burton *Wilko* Bench Memo].
[xli] *See* Request of Amicus Curiae to Participate in Oral Argument, William O. Douglas Papers, Library of Congress, Madison Building, Box 1146, Court Memoranda, No. 39 (Oct. 2, 1953).
[xlii] *See* Petition for Leave to Proceed *in Forma Pauperis*, Stanley F. Reed Papers, Univ. of Kentucky, Box 154, Folder 7, No. 39 (1953).
[xliii] *See* Brief for the Securities & Exchange Comm'n., *Wilko v. Swan*, at *6-8.
[xliv] *See* Petitioner's Brief, *Wilko v. Swan*, No. 39, 1953 WL 78483 at *3-4 (1953).
[xlv] *See* Request of SEC to Participate in Oral Argument, Earl Warren Papers, available at Georgetown University Law Center, Georgetown Law Library, Microfilm Collection, Reel 8, No. 39 (1953) (reproduced from the Collections of the Manuscript Division, Library of Congress).
[xlvi] Cert. Memo to CA 2, Earl Warren Papers, available at Georgetown University Law Center, Williams Library, Microfilm Collection, Reel 8, No. 39 at 6 (1953) (reproduced from the Collections of the Manuscript Division, Library of Congress).
[xlvii] Brief for the Securities & Exchange Comm'n, *supra* note at *20-22.
[xlviii] *Id.* At 14.
[xlix] *See* Brief for Respondents Joseph E. Swan, et al., Wilko v. Swan, No. 39, 1953 WL 78484 at *10-12 (Oct. 15, 1953). The FAA only made specific exemptions for "contracts of employment" involving seamen, railroad employees, and other workers engaged in interstate commerce. *See* 9 U.S.C. § 1.
[l] See *Wilko v. Swan* Record of Opinions Circulated, Robert Jackson Papers, Library of Congress, Madison Building, Box 184, No. 39, (1953) (displaying the date) [hereinafter "Robert Jackson *Wilko* Notes"].
[li] *See*, *Wilko v. Swan* Conference Notes, William Douglas Papers, Library of Congress, Box 1147, Argued Cases, *Wilko v. Swan*, No. 39 (1953) [hereinafter "Douglas *Wilko* Conference Notes"].
[lii] *See*, "Douglas *Wilko* Conference Notes," *supra* note 51. *See also*, "Robert Jackson *Wilko* Notes," *supra* note 51 (writing that Black said "could not be bound by arbitration").
[liii] *See* "Douglas *Wilko* Conference Notes", *supra* note 51.
[liv] *See, id.*
[lv] *See, id. See also*, *Wilko v. Swan* Conference Notes, Harold Burton Papers, Library of Congress, Madison Building, Box 239, No. 39 at *1-2 (showing a similar account of proceedings).
[lvi] *See* Docket Book, Harold Burton Papers, Library of Congress, Madison Building, Box 238, No. 39 (1953).
[lvii] *See, Wilko v. Swan* Draft Opinion, Stanley F. Reed Papers, University of Kentucky, Box 154, Folder 7, at *7 (1953) (showing heavily edited Reed drafts in which he attempts to rule the opposite way in *Wilko*).
[lviii] *See* "To the Conference", Stanley F. Reed Papers, University of Kentucky, Box 154, Folder 7 (Nov. 20, 1953).
[lix] *See Wilko v. Swan* Memorandum, Stanley F. Reed Papers, University of Kentucky, Box 154, Folder 6 at *1 (Nov. 20, 1953) (in which "memorandum by Reed" is crossed off and labeled "opinion").
[lx] *Id.* at 11.
[lxi] *Id.*
[lxii] *Wilko v. Swan* Memorandum, Stanley F. Reed Papers, University of Kentucky, Box 154, Folder 6, at *12 (Nov. 22, 1953).
[lxiii] *Id.* at 5-6.
[lxiv] *Id.* at 11.
[lxv] *Wilko*, 346 U.S. at 427.
[lxvi] *Id.*
[lxvii] *See*, *id.* at 438-39 (J. Jackson Concurring).
[lxviii] *See, id.* at 439-40. (J. Frankfurter, dissenting). Frankfurter's opposition was meaningful given his pivotal role in creating and implementing the Securities Act. *See* Adam C. Pritchard & Robert B. Thompson, *Securities Law and the New Deal Justices*, 95 VA. L. REV. 842, 842 (2009) (describing Frankfurter's "pervasive" involvement with the securities laws).
[lxix] *See*, *Wilko* 346 U.S. at 440 (J. Frankfurter dissenting).
[lxx] *See also*, *Polygraphic* 350 U.S. at 198 (holding, in a majority opinion that Black joined, that the FAA was a procedural statute and did not supersede state law).
[lxxi] *See Moseley*, 374 U.S. at 167.
[lxxii] *See*, *id.*
[lxxiii] *See* 40 U.S.C. § 3133.
[lxxiv] *See Moseley*, 374 U.S. at 168.
[lxxv] *See* Electronic & Missile Facilities, Inc. v. U.S. for Use of Moseley, 306 F.2d 554, 555 (1962).

[lxxvi] *See, id*. at 554, 555-58. Judge Richard Rives, in dissent, said allowing arbitration of this claim would run against the intent of the Miller Act. *See, id*. at 558-60 (J. Rives dissenting).
[lxxvii] *See, id*. at 558.
[lxxviii] 271 F.2d 402 (2d Cir., 1959).
[lxxix] *Id*. at 406-09
[lxxx] *Devonshire*, 271 F.2d at 409-12.
[lxxxi] *See, id*. at 410 ("any doubts as to the construction of the Act ought to be resolved in line with its liberal policy of promoting arbitration both to accord with the original intention of the parties and to help ease the current congestion of court calendars.").
[lxxxii] *See Devonshire*, 362 U.S. at 909.
[lxxxiii] *See Prima Paint Corp. v. Flood & Conklin* Cert. Memo, William O. Douglas Papers, Library of Congress, Madison Building, Box 1380, No. 343 at *1 (Aug. 30, 1966) [hereinafter "Douglas *Prima Paint* Cert. Memo"].
[lxxxiv] *See* United States of the Use of H.W. Moseley, d/b/a Moseley Plumbing and Heating Company v. Electronic & Missile Facilities, 371 U.S. 919, 919 (1962).
[lxxxv] *See United States for the Use of H.W. Moseley d/b/a Mosely Plumbing and Heating Company vs. Electronic & Missile Facilities Inc., et al*. Docket Book, William O. Douglas Papers, Library of Congress, Madison Building, Box 1280, No. 401 [hereinafter "Douglas *Moseley* Docket Book"].
[lxxxvi] *See* Arthur J. Goldberg, *Memorandum to the Conference Re: No. 401 United States for the Use of H.W. Moseley d/b/a Mosely Plumbing and Heating Company vs. Electronic & Missile Facilities Inc., et al*, William O. Douglas Papers, Library of Congress, Madison Building, Box 1282, Office Memoranda, No. 401 (Nov. 19, 1962).
[lxxxvii] *See* "Douglas *Moseley* Docket Book," *supra* note 85.
[lxxxviii] *See* Brief of Petitioner, *U.S.A. for the use of Moseley v. Electronic & Missile*, No. 401, 1963 WL 105581 at *28-31 (Jan. 25, 1963) [hereinafter "*Moseley* Petitioner Brief"].
[lxxxix] *See* Brief of Respondents, *U.S.A. for the use of Moseley v. Electronic & Missile*, No. 401, 1963 WL 105582 at *6 (Feb. 28, 1963) [hereinafter "*Moseley* Respondents' Brief"].
[xc] *See* "*Moseley* Petitioner Brief," *supra* note 88, at *36-39.
[xci] *See* "*Moseley* Petitioner Brief," *supra* note 88 at *15-16.
[xcii] *See* "*Moseley* Respondents' Brief," *supra* note 89 at *17-21.
[xciii] *Id*. at *17.
[xciv] *See* Oral Argument, *Moseley v. Electronic & Missile Facilities, Inc*., No. 401, OYEZ, (Apr. 16, 1963) https://www.oyez.org/cases/1962/401.
[xcv] *See* Oral Argument, *Moseley v. Electronic & Missile Facilities, Inc*., No. 401, OYEZ, (Apr. 17, 1963) https://www.oyez.org/cases/1962/401.
[xcvi] *See*, *id*.
[xcvii] *See U.S. for Use of Moseley v. Electronic & Missile Facilities, Inc*. Conference Notes, Library of Congress, Madison Building, Box 1260, Argued Cases, No. 401 at *1 (1962) [hereinafter "Douglas *Moseley* Conference Notes"].
[xcviii] *See*, *id*.
[xcix] *See, id*. at *1-2.
[c] *See, id*. at *2-3.
[ci] *See*, *id*. at 2.
[cii] *See*, *id*. at *4.
[ciii] *See*, *id*. at *2-4.
[civ] *See, e.g.*, Dennis R. Nolan & Roger I. Abrams, *American Labor Arbitration: The Early Years*, 25 No. 3 U.F.L.R. 373, 376 (Summer 1983).
[cv] Arbitration agreements were often utilized in exchange for no-strike clauses. *See generally,* W.E. Akin, *Arbitration and Labor Conflict: The Middle Class Panacea, 1886-1900*, 29 No. 4 THE LABOR HISTORIAN 565 (1967) (describing this process).
[cvi] 353 U.S. 448 (1957).
[cvii] *Id*. at 458.
[cviii] United Steelworkers v. American Manufacturing Co., 363 U.S. 564 (1960); United Steelworkers v. Enterprise Wheel & Car Corp. 363 U.S. 593 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960).
[cix] *See United Steelworkers v. Warrior & Gulf*, 363 U.S. at 578.
[cx] *Id*. at 582-83.
[cxi] *Id*. at 585.
[cxii] *See, e.g.* Drake Bakeries, Inc. v. Local 50, Am. Bakery and Confectionary Workers Intern., AFL-CIO, 370 U.S. 254, 254 (1962); John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543, 543 (1962) (upholding a previously negotiated

arbitration clause following a corporate merger). In *Drake*, Black admitted he "had some doubts about [enforcing arbitration]" in the case, but was "persuaded" by Justice White's opinion. *See Drake Bakeries v. Local 50* Draft, Byron White Papers, Library of Congress, Madison Building, at *12 (Jun. 11, 1962).
[cxiii] *See* Newman, *supra* note 12, at 195.
[cxiv] *See Carey v. Westinghouse*, at 275 (J. Black Dissenting). This section only scratches the surface of Black's dissents in labor arbitration cases. *See*, *Lucas Flour*, 369 U.S. at 107-10 (J. Black dissenting) (accusing the court of amending a contract in favor of a pro-arbitration policy preference); *Republic Steel v. Maddox*, 379 U.S. at 660-70 (J. Black dissenting) (making a range of arguments against requiring a steelworker to bring a damages claim through union grievance procedures before bringing any state court claim) *Simmons v. Union News*, 382 U.S. at 884-88 (1965) (J. Black dissenting) (dissenting from a denial of *certiorari* in a case involving a labor union which refused to bring a claim into greivance procedure); *Vaca v. Sipes*, 386 U.S. at 207 (J. Black dissenting) ("today the Court holds that an employee with a meritorious claim has no absolute right to have it either litigated or arbitrated…").
[cxv] Earl Warren and Tom Clark each joined him once; no other justices would. *See Simmons v. Union News*, 382 U.S. at 884-88 (1965) (J. Black dissenting); *Carey v. Westinghouse*, 375 U.S. at 275 (J. Black dissenting).
[cxvi] *See, e.g.*, Lee Modjeska, *Labor and the Warren Court,* 8 IND. RELATIONS L. J. 479, 479 (1986) ("the Warren Court supported the Wagner Act philosopies of strong unionism and vigorous support of the principle of collective bargaining...").
[cxvii] See, e.g., Brief for the Petitioner, *United Steelworkers of America v. Am. Manuf. Co.,* No. 360, 1960 WL 63603, at *29-41 (Mar. 11, 1960) (laying out the importance of arbitration to collective bargaining). Indeed, labor arbitration was important enough to unions that, during one 1965 case dealing with whether a union steelworker could bring a backpay claim in state court or had to initially bring the claim through labor grievance procedures, the AFL-CIO filed its first ever *amicus* brief taking an *employer's* side in an employee-employer dispute. *See* Brief for the American Federation of Labor and Congress of Indus. Orgs. as Amicus Curiae, *Republic Steel Corp. v. Maddox*, No. 43, 1964 WL 81230, at *1-6 (Aug. 18, 1964).
[cxviii] *See Sinclair v. Atkinson*, 370 U.S. at 228 (J. Brennan dissenting).
[cxix] *See also*, Stephen L. Hayford, *Unification of the Law of Labor Arbitration and Commercial Arbitration: AN Idea Whose Time Had Come*, 52 BAYLOR L. REV. 781 (Fall 2000) (analyzing essential similarities between commercial and labor arbitration law).
[cxx] *See Re: No. 401 – United States for the Use of H.W. Moseley d/v/a Moseley Plumbing and Hearing Company v. Electronic & Missile Facilities, Inc., et al*; Hugo L. Black Papers, Library of Congress, Madison Building, Box 373 (Apr. 22, 1963). The letter argued that a decision in favor of respondent in *Moseley* would overturn the Court's 1956 holding in *Polygraphic* that the FAA was a procedural statute which did not apply in state courts. *See Polygraphic*, 350 U.S. at 198.
[cxxi] *See* Letter to Arthur Goldberg, Hugo L. Black Papers, Library of Congress, Madison Building, Box 373, Moseley v. Electronic and Missile Facilities at *1 (Apr. 23, 1963) [hereinafter "Black Goldberg Letter"].
[cxxii] *See* Note from Clerk Clay to Hugo Black, Hugo L. Black Papers, Library of Congress, Madison Building, Box 373, Moseley v. Electronic and Missile Facilities (Apr. 1963).
[cxxiii] *See* "Black Goldberg Letter," *supra* note 121, at *1.
[cxxiv] *See* Memorandum for the Conference by Mr. Justice Black, Justice William J. Brennan Papers, Library of Congress, Madison Building, Box 373, United States *ex rel.* Moseley v. Electronic & Missile Facilities (May 31 1963) [hereinafter "Black *Moseley* Arbitration Memo"].
[cxxv] *See*, *id.* at 6.
[cxxvi] *See*, *id.* at 26-29.
[cxxvii] *See, id.* at 23-25.
[cxxviii] *See, id.* at 26.
[cxxix] *Id.*
[cxxx] "Black *Moseley* Arbitration Memo," *supra* note 124, at 26.
[cxxxi] *See, id.* at 3-14.
[cxxxii] *See, id.* at 14-24.
[cxxxiii] *Id.* at 23.
[cxxxiv] *Id.* at 21.
[cxxxv] *Id.* at 15.
[cxxxvi] *Id.* at 15-20.
[cxxxvii] *Id.*
[cxxxviii] "Black *Moseley* Arbitration Memo," *supra* note 124, 21-22.
[cxxxix] *Id.* at 22.

[cxl] *See, id.* (citing Joint Hearings before the Subcommittees of the Committee on the Judiciary on S. 1005 and H.R. 646, 68th Cong., 1st Sess. 35 (1924)).
[cxli] Black *Moseley* Arbitration Memo, *supra* note 124, at 23.
[cxlii] Draft Opinion, William J. Brennan Papers, Library of Congress, Madison Building, Box I:92, Folder 62-401, United States *ex rel* Moseley v. Electronic & Missile Facilities, at 1-7 (Jun. 4, 1963).
[cxliii] *Id.* at 4-6.
[cxliv] *See* Memo for the Conference, Hugo L. Black Papers, Library of Congress, Madison Building, Box 373, Moseley v. Electronic and Missile Facilities (June 3, 1963) (crossing out "memo" and writing "dissent").
[cxlv] *Moseley* Memo, Tom Clark Papers, University of Texas, Box A146, Folder 11, at *1 (May 1963).
[cxlvi] Letter from Arthur Goldberg to Tom Clark, "Re: No. 401 – U.S. for Use of Moseley etc. v. Electronic & Missile Facilities", University of Texas, Box A146, Folder 11, at *1-2 (Jun. 5, 1963).
[cxlvii] *See Moseley* Circulated Draft Opinion, Tom Clark Papers, University of Texas, Box A146, Folder 11, at *1 (Jun. 5, 1963).
[cxlviii] Note from Tom Clark to William Douglas, William O. Douglas Papers, Library of Congress, Madison Building, Box 1283, Office Memoranda, Miscellaneous (June 5, 1963).
[cxlix] *See Moseley*, 371 U.S. at 167.
[cl] *See*, *id.*, at 168-72.
[cli] *See*, *id.* at 172-72 (J. Black concurring).
[clii] *Moseley*, 371 U.S. at 172 (J. Black Concurring).
[cliii] *See* "Burton *Wilko* Bench Memo," *supra* note 40, at *4.
[cliv] See Francis P. McQuade & Alexander T. Kardos, *Mr. Justice Brennan and His Legal Philosophy*, 33 NOTRE DAME L. REV. 321, 325 (1958).
[clv] *See* "Douglas *Moseley* Conference Notes," *supra* note 97, at *2.
[clvi] *See*, *e.g.*, Southland Corp. v. Keating, 456 U.S. 1, 10-16 (1984) (holding that the FAA completely displaced state law).
[clvii] *See* Newman, *supra* note 20, at 546 (describing frustration at "Clark's pogo-stick-like unpredictability").
[clviii] *See Lincoln Mills*, 353 U.S. at 448.
[clix] *See United Steelworkers v. Warrior & Gulf*, 363 U.S. at 564.
[clx] This reality once made Black quip about Warren that he "wished he knew a little more law." *See*, *id.* at 566.
[clxi] *Moseley*, 371 U.S. at 172 (J. Black Concurring).
[clxii] *See Prima Paint.*, 388 U.S. at 397.
[clxiii] *Id.* At 398.
[clxiv] *Id.*
[clxv] *Id.* at 398-99.
[clxvi] *Id.* at 399.
[clxvii] *See* Prima Paint Corp. v. Flood & Conklin Mfg. Co., 262 F. Supp. 605, 607 (S.D.N.Y., 1966).
[clxviii] *See* Prima Paint Corp. v. Flood & Conklin Mfg. Co., 360 F.2d 315, 317 (2d Cir., 1966).
[clxix] *Id.* at 318. This holding mattered because this was a New York contract, and New York law required the matter to be remanded to the District Court. *See Prima Paint Corp. v. F&C Mfg. Co.* Cert. Memo, Tom C. Clark Papers, University of Texas, Box 218, Folder 5, No. 343 at *1 (1966) (indicating this in a written note).
[clxx] *See* "Douglas *Prima Paint* Cert. Memo," *supra* note 83, at *2.
[clxxi] *See Prima Paint v. F&C Conklin* Docket Book, William O. Douglas Papers, Box 1373, Library of Congress, Madison Building, No. 343 (1967). [hereinafter "Douglas *Prima Paint* Docket Book"].
[clxxii] "Douglas *Prima Paint* Cert. Memo," *supra* note 83, at *1.
[clxxiii] *See* Brief of the American Arbitration Association as Amicus Curiae in Support of Respondent, *Prima Paint v. Flood & Conklin Mfg. Co.*, No. 343 1967 WL 113919 at *4-5 (1966) (warning that a finding against "seperability" would frustrate the intent of "thousands of commercial businessmen" who utilized arbitration clauses).
[clxxiv] *See* Brief for the Petitioner, *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, No. 343, 1967 WL 113916 at *12-24 (1967) (arguing that arbitration clauses are not "seperable" and due process required a judicial interpretation of whether the parties actually agreed to arbitrate); Brief for Respondent, *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, No. 343, 1967 WL 113917 at *7-21 (1967) (citing *Devonshire* throughout to support its argument that the FAA was substantive and arbitrators could review fraud claims); Reply Brief for Petitioner and Brief for Petitioner in Opposition to the Motion and Brief of the American Arbitration Association as Amicus Curiae, *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, No. 343, 1967 WL 113918 at *20-22 (arguing that the existence of fraud negates the existence of any valid contract or arbitration clause within it)

[clxxv] *See* Oral Argument, *Prima Paint Corporation v. Flood & Conklin Mfg. Company*, OYEZ, (Mar. 16, 1967) https://www.oyez.org/cases/1966/343.
[clxxvi] *Id.*
[clxxvii] *See*, *id.*
[clxxviii] *See Prima Paint Corp. v. Flood & Conklin Mfg* Docket Sheet, William O. Douglas Papers, Library of Congress, James Madison Building, Box 1373, No. 342 (1967) [hereinafter "Douglas *Prima* Docket Sheet"].
[clxxix] *See Prima Paint Corp. v. Flood & Conklin Mfg*. Conference Notes, William O. Douglas Papers, Library of Congress, James Madison Building, Box 1373, No. 343 at *1 (Mar. 17, 1967). [hereinafter "Douglas *Prima* Conference Notes"].
[clxxx] Warren's Bench Memo on *Prima* is absent from the Congressional archives. We do not know his reasoning for this switch. However, one could point out that Warren's relationship with Black had grown frosty by this point; Warren said in early 1966 following disagreements in certain cases that "Black has hardened and gotten old. It's a different Black now." *See* Newman, *supra* note 20, at 570.
[clxxxi] Douglas's attitude towards the merits is not recorded in his own conference notes or *certiorari* memo. However, his *certiorari* memo does mention that the lower court decision "flies in the face of Bernhardt v. Polygraphic Co." *See* "Douglas *Prima* Cert. Memo," *supra* note 83, at *1. Given that Douglas wrote *Bernhardt*, it is possible he did not appreciate how *Prima* threw that opinion into question.
[clxxxii] *See* "Douglas *Prima* Conference Notes," *supra* note 177, at *2.
[clxxxiii] *See* "Douglas *Prima* Docket Sheet," *supra* note 176.
[clxxxiv] *See Prima Paint Corp. v. Flood & Conklin Mfg. Co*. Draft, Abe Fortas Papers, Yale Univ. Lib., Box I:41, Folder 837 at *1 (1966) [hereinafter Fortas *Prima* Draft].
[clxxxv] *See id.* at *7-8.
[clxxxvi] *See* Fortas *Prima* Draft, *supra* note 182, at *7-8.
[clxxxvii] *See Prima*, 388 U.S., at 404.
[clxxxviii] This holding implicitly made such agreements "separable" from the rest of their contract.
[clxxxix] *See Prima,* 388 U.S. at 404-05.
[cxc] *Id.* at 405.
[cxci] *Compare* Fortas *Prima* Draft *supra* at *1-15 (ruling that the transaction involved interstate commerce, the FAA was substantive, and fraud-in-inducement claims could be referred to arbitrators) to *Prima*, 388 U.S. at 401-07 (making the same holdings in a different order).
[cxcii] Fortas did not apply the FAA to completely supersede state law or include *Devonshire*'s language that contractual arbitration clauses were to be liberally construed. *See Devonshire*, 271 F.2d at 404-05, 410.
[cxciii] *See* Letter from Earl Warren to Abe Fortas, "Re: No. 343 – Prima Paint v. Flood & Conklin Mfg.," (Jun. 1, 1967); Letter from Tom C. Clark to Abe Fortas, "Re: No. 343, Prima Paint v. Flood and Conklin Mfg. Co." (May 19, 1967); Letter from William Brennan to Abe Fortas, "RE: No. 343 – Prima Paint v. Flood & Conklin Mfg. Co. (May 19, 1967); *all documents taken from* Abe Fortas Papers, Yale Univ. Lib., I:41, Folder 836.
[cxciv] *See* "Re: No 343 – Prima Paint Corporation v. Flood & Conklin Mfg. Co.," Byron White Papers, Library of Congress, Madison Building, Box I:105, Folder 66-343 (May 22, 1967).
[cxcv] *See* Note from Abe Fortas to Byron White, Byron White Papers, Library of Congress, Madison Building, Box I:105, Folder 66-343 (1967).
[cxcvi] *See Prima Paint v. Flood & Conklin* Circulated Draft, Byron White Papers, Library of Congress, Madison Building, Box I:105, Folder 66-343 (June 6, 1967).
[cxcvii] "Black Goldberg Letter," *supra* note 121.
[cxcviii] *Prima Paint* Draft Dissent, Hugo L. Black Papers, Library of Congress, Madison Building, Box 395, *Prima Paint Corp. v. Flood & Conklin Mfg. Co.* (1966) (handwritten draft).
[cxcix] *Id.* at 412-15.
[cc] *Compare* "Black *Moseley* Arbitration Memo," *supra* note 124, at 24-26 ("Section 4 of the Act, 9 U.S.C. § 4, requires that before a court may direct arbitration according to the parties' agreement, it must be satisfied 'that the making of the agreement for arbitration . . . is not in issue . . .when the existence is in dispute–as when the contract is alleged to have been procured by fraud–then arbitration cannot be compelled until this issue has been determined") and *Prima Paint*, 388 U.S. at 410-11 (J. Black Dissenting) ("Section 4 [of the FAA] merely provides that the court must order arbitration if it is 'satisfied that the making of the agreement for arbitration is not in issue.' …a general allegation of fraud in the inducement puts into issue the making of the agreement to arbitrate").
[cci] *See Prima*, 388 U.S. at 416 (J. Black dissenting).
[ccii] *Id.*
[cciii] *Prima*, 388 U.S. at 416 (J. Black dissenting).

[ccciv] *See*, *id.*
[cccv] *See*, *id.* at 418 n. 19 (quoting Committee on Commerce, Trade & Commercial Law, *The United States Arbitration Law and its Application,* 20 Ill. L. Rev. 11 A.B.A.J. 153, 154 (1925)).
[cccvi] *See*, *id.* at 419-20 (quoting 65 Cong. Rec. 1931 (1924)).
[cccvii] *See*, *id.* at 420, n.24 ("this seems implicit in § 3's provision for a stay by a 'court in which such suit is pending and § 4's provision that enforcement may be ordered by 'any United States district court which, save for such agreement, would have jurisdiction under Title 28…'").
[cccviii] *See, id.* at 423 (quoting H.R.Rep.No.96, 68th Cong., 1st Sess. (1924)).
[cccix] *Id.*
[cccx] *Id. at* 425 (J. Black dissenting). This argument was not a new one for Black; he frequently raised it Black in his dissents to the Court's labor arbitration cases. *See, e.g.*, *Lucas Flour*, 369 U.S. at 107-10 (J. Black dissenting) (accusing the court of amending a contract in favor of a pro-arbitration policy preference).
[cccxi] *See Prima Paint Corp. v. Flood & Conklin* Draft (J. Black Dissenting) Abe Fortas Papers, Box I:41, Folder 838 at *1 (Jun. 1, 1967) [hereinafter "Fortas Comments on Black *Prima* Dissent"].
[cccxii] *See id.* at *6.
[cccxiii] *See* "Fortas Comments on Black *Prima* Dissent," *supra* note 208, at *10.
[cccxiv] *See*, *id.* at *8.
[cccxv] See Prima Paint Corp. v. Flood & Conklin Draft (J. Black dissenting), Abe Fortas Papers, Box I:41, Folder 838 at *1 (Jun. 2, 1967).
[cccxvi] *See* John Marshall Harlan II to Abe Fortas, "Re: No. 343 – Prima Paint v. Flood & Conklin," Abe Fortas Papers, Yale Univ. Lib., I:41, Folder 836 (Jun. 1, 1967).
[cccxvii] *See Prima*, 388 U.S. at 405 n.13.
[cccxviii] *See Prima Paint v. Flood & Conklin* Draft Dissent, Hugo L. Black Papers, Library of Congress, Madison Building, Box 395, *Prima Paint Corp. v. Flood & Conklin Mfg. Co.* at 12 n.22 (Jun. 8, 1967)
[cccxix] *See Prima Paint v. Flood & Conklin* Draft Dissent, Hugo L. Black Papers, Library of Congress, Madison Building, Box 395, *Prima Paint Corp. v. Flood & Conklin Mfg. Co,* at *1 (Jun. 2, 1967) (showing Justice Stewart joining the opinion one day after circulation).
[cccxx] *See Prima Paint v. Flood & Conklin* Draft Dissent, Hugo L. Black Papers, Library of Congress, Madison Building, Box 395, *Prima Paint Corp. v. Flood & Conklin Mfg. Co,* at *1 (Jun. 7, 1967) (showing Justice Douglas joining the opinion).
[cccxxi] *See Prima*, 388 U.S. at 395.
[cccxxii] *See Prima*, 388 U.S., at 407 (J. Harlan Concurring).
[cccxxiii] *See, e.g.*, United States Gypsum Co. v. United Steelworkers of America, AFL-CIO, 384 F.2d 38, 49 (5th Cir., 1967) (citing *Prima* to send an issue to arbitration which was a "classic question for arbitral determination").
[cccxxiv] *See* Roger H. Broach, *Under the Federal Arbitration Act in a Diversity Suit an Allegation of Fraudulent Inducement to a Contract Involving Interstate Commerce Will Not Prevent Enforcement of a Broad Arbitration Clause in the Contract*, 46 TEX. L. REV. 260, 265-66 (December 1967).
[cccxxv] *See* Robert Coulson, *Prima Paint: An Arbitration Milestone*, THE BUSINESS LAWYER, Vol. 23, No. 1, 241 241-48 (November 1967).
[cccxxvi] *See*, e.g., Margaret Moses, *supra* note 8, at 100-12 (describing these efforts).
[cccxxvii] *See, e.g.*, *Devonshire*, 271 F.2d at 402.
[cccxxviii] *See* Newman, *supra* note 20, at 595.
[cccxxix] *See id.* at 569-70.
[cccxxx] *See* Newman, *supra* note 20, at 595. In Prima, it also likely did not help matters that the majority opinion was written by Abe Fortas, with whom Black had a very frosty relationship. *See*, *id.* at 589-90 (describing the tension between Fortas and Black as the true tension on the Court at this time).
[cccxxxi] *See generally*, A. Kenneth Pye, *The Warren Court and Criminal Procedure*, 67 No. 2, Mich. L. Rev., 249 (1968) (describing the Warren Court's groundbreaking efforts to protect the rights of defendants in a range of cases).
[cccxxxii] "Black *Moseley* Arbitration Memo," *supra* note 124, at 22.
[cccxxxiii] Gideon v. Wainwright, 372 U.S. 335, 344 (1963).

Applicant Details

First Name	**Josceline**
Middle Initial	**M**
Last Name	**Sanchez**
Citizenship Status	**U. S. Citizen**
Email Address	**js5797@columbia.edu**
Address	**Address** Street **400 W 119th St** City **New York** State/Territory **New York** Zip **10027-7149** Country **United States**
Contact Phone Number	**13057780724**

Applicant Education

BA/BS From	**University of Miami**
Date of BA/BS	**May 2018**
JD/LLB From	**Columbia University School of Law** **http://www.law.columbia.edu**
Date of JD/LLB	**June 30, 2023**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Human Rights Law Review - Jailhouse Lawyer's Manual**
Moot Court Experience	**Yes**
Moot Court Name(s)	**National Thurgood Marshall Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**Yes**

Specialized Work Experience

Recommenders

Seo, Sarah
as2607@columbia.edu
Kessler, Jeremy
jkessler@law.columbia.edu
212-854-4947
Greene, Jamal
jamal.greene@law.columbia.edu
212-854-5865

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Josceline Sanchez
8185 NW 7th St. Apt. 409
Miami, FL 33126
(305) 778-0724
Js5797@columbia.edu

June 12, 2023

The Honorable Jamar K. Walker
United States District Court
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a recent 2023 graduate of Columbia Law School, and I write to apply for a clerkship in your chambers beginning in 2024.

From August 2023 until August 2024, I will be clerking for Judge Gabriel Sanchez in the United States Court of Appeals for the Ninth Circuit. Accordingly, I am seeking a judicial clerkship in your chambers for the 2024-2025 term.

Enclosed please find a resume, transcript, and writing sample. Also enclosed are letters of recommendation from the following professors:
- Jamal Greene (212-854-5865, jamal.greene@law.columbia.edu);
- Sarah Seo (212-854-47797, sarah.seo@law.columbia.edu);
- Jeremy Kessler (212-854-4947, jkessler@law.columbia.edu).

Thank you for your consideration. Please do not hesitate to contact me should you need any additional information.

Respectfully,

Josceline Sanchez

JOSCELINE MELIZA SANCHEZ

8185 NW 7th St., Apt 409, Miami, FL • (305) 778-0724 • js5797@columbia.edu

EDUCATION

Columbia Law School, New York, NY
J.D. expected June 2023
Honors: James Kent Scholar, 2021-2022
Activities: *Jailhouse Lawyer's Manual*, Executive Articles Editor
Columbia Center for Institutional and Social Change, Paralegal Pathways Initiative, Curriculum Co-Chair, 2021-2022 & 2022-2023
Research Assistant, Professor David E. Pozen Fall '22 and Spring '23
Teaching Assistant, Criminal Law Spring '22
Columbia Center for Justice, Beyond the Bars Fellowship, Fall '21
National Thurgood Marshall Moot Court, Regional Finalist & National Quarterfinalist, Spring '21

University of Miami, Coral Gables, FL
Bachelor of Arts in Accounting, *magna cum laude*, received May 2018
Honors: Eloise Kimmelman Accounting Scholarship; Dean's List, Provost's and President's Honor Roll
Activities: Beta Alpha Psi (Accounting and Finance Honors society)

Miami Dade College, Miami, FL
Associate of Arts in Business Administration received May 2016

EXPERIENCE

Hon. Gabriel Sanchez, U.S. Court of Appeals for the Ninth Circuit, San Francisco, CA
Term Law Clerk Aug. 2023 – Aug. 2024

Federal Public Defender for the District of Columbia, Washington, D.C. May 2022 – Sept. 2022
Legal Intern
Drafted successful motion to suppress evidence in violation of defendant's 5th Amendment right to an attorney. Drafted appellant brief challenging discretionary denial of resentencing petition under the First Step Act. Drafted motion to dismiss indictment challenging the lawfulness of a pre-indictment delay. Conducted research and drafted memoranda regarding the spoilation of evidence, relevance of evidence, federal jurisdiction and other issues under the Federal Rules of Evidence, Federal Rules of Criminal Procedure, and 18 U.S.C. § 922 and § 924.

United States Attorney's Office for the Southern District of New York, New York, NY
Criminal Division Intern June 2021 – Aug. 2021
Performed legal research and drafted memoranda addressing issues of discovery obligations in civil and criminal joint investigations, constitutional standards on searches and seizures, and other statutory issues.

HLB Gravier, LLP, Miami, FL
Audit Associate February 2019 – Aug. 2020
Prepared financial statements, footnote disclosures, and supplementary schedules for governmental, non-profit. and for-profit entities in accordance with GAAP; performed analytical procedures over clients' financial and accounting records in accordance with GAAS; specialized on employee-benefit plan audits pursuant to ERISA regulations.

Transition, Inc., Miami, FL (non-profit, reentry organization)
Volunteer July 2017 – June 2020
Assisted with skill-development workshops and employment opportunities for clients; reviewed internal control procedures in accordance with single-audit and governmental standards; and assisted with grant proposals.

ADDITIONAL INFORMATION

Certifications: Certified Public Accountant License (CPA), Florida Board of Accountancy, 2020
Language Skills: Spanish (native)

Columbia Law School

Registration Services

law.columbia.edu/registration
435 West 116th Street, Box A-25
New York, NY 10027
T 212 854 2668
registrar@law.columbia.edu

CLS TRANSCRIPT (Unofficial)

06/09/2023 17:37:41

Program: Juris Doctor

Josceline M Sanchez

Spring 2023

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6905-1	Antidiscrimination Law	Johnson, Olatunde C.A.	3.0	B+
L6293-2	Antitrust and Trade Regulation	Wu, Timothy	3.0	B
L6655-1	Human Rights Law Review		0.0	CR
L9160-1	S Paralegal Pathways Initiative Leadership Seminar	Genty, Philip M.	2.0	CR
L6472-1	S. Special Topics in Federal Courts	Schmidt, Thomas P.	2.0	A-
L6423-1	Securities Regulation	Fox, Merritt B.	4.0	
L6822-1	Teaching Fellows	Genty, Philip M.	2.0	CR

Total Registered Points: 16.0

Total Earned Points: 12.0

Fall 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6238-1	Criminal Adjudication	Richman, Daniel	3.0	B+
L6655-1	Human Rights Law Review		0.0	CR
L6250-1	Immigration Law	Gupta, Anjum	3.0	CR
L6474-1	Law of the Political Process	Briffault, Richard	3.0	A-
L6274-2	Professional Responsibility	Fox, Michael Louis	2.0	A-
L9160-1	S Paralegal Pathways Initiative Leadership Seminar	Genty, Philip M.	2.0	CR
L6683-1	Supervised Research Paper	Pozen, David	2.0	A

Total Registered Points: 15.0

Total Earned Points: 15.0

Spring 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6109-1	Criminal Investigations	Livingston, Debra A.	3.0	A-
L6241-1	Evidence	Capra, Daniel	4.0	A-
L6655-1	Human Rights Law Review		0.0	CR
L6776-1	Moot Court Student Judge	Bernhardt, Sophia	1.0	CR
L6208-1	S. Advanced Administrative Law: Regulatory Innovation and Judicial Review [Minor Writing Credit - Earned]	Kessler, Jeremy; Sabel, Charles F.	3.0	A-
L6683-2	Supervised Research Paper	Greene, Jamal	1.0	A
L6822-1	Teaching Fellows	Seo, Sarah A.	1.0	CR
L8517-1	Workshop on Facilitating Meaningful Reentry	Genty, Philip M.; Strauss, Ilene	3.0	CR

Total Registered Points: 16.0

Total Earned Points: 16.0

Fall 2021

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6425-1	Federal Courts	Kent, Andrew	4.0	A-
L6655-1	Human Rights Law Review		0.0	CR
L6169-2	Legislation and Regulation	Kessler, Jeremy	4.0	A
L6675-1	Major Writing Credit	Greene, Jamal	0.0	CR
L8661-1	S. Supreme Court	Lefkowitz, Jay; Menashi, Steven	2.0	A
L6695-1	Supervised JD Experiential Study	Genty, Philip M.	1.0	CR
L6683-1	Supervised Research Paper	Greene, Jamal	2.0	A

Total Registered Points: 13.0

Total Earned Points: 13.0

Spring 2021

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6108-4	Criminal Law	Seo, Sarah A.	3.0	A-
L6667-1	Frederick Douglass Moot Court	Strauss, Ilene; Yusuf, Temitope K.	0.0	CR
L6071-1	Law and Development	Pistor, Katharina	3.0	A-
L6130-6	Legal Methods II: Legal Theory	Purdy, Jedediah S.	1.0	CR
L6121-28	Legal Practice Workshop II	Yusuf, Temitope K.	1.0	P
L6116-4	Property	Purdy, Jedediah S.	4.0	B+
L6118-1	Torts	Merrill, Thomas W.	4.0	B

Total Registered Points: 16.0

Total Earned Points: 16.0

Fall 2020

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6101-3	Civil Procedure	Genty, Philip M.	4.0	B+
L6133-5	Constitutional Law	Glass, Maeve	4.0	B+
L6105-3	Contracts	Emens, Elizabeth F.	4.0	B
L6113-4	Legal Methods	Briffault, Richard	1.0	CR
L6115-20	Legal Practice Workshop I	Kreiner, Evan Ross; Whaley, Hunter	2.0	P

Total Registered Points: 15.0

Total Earned Points: 15.0

Total Registered JD Program Points: 91.0

Total Earned JD Program Points: 87.0

Honors and Prizes

Academic Year	Honor / Prize	Award Class
2021-22	James Kent Scholar	2L

54200980 Sex ###-##
Student ID SSN

06/12/2022

UNIVERSITY OF MIAMI

MIAMI

CORAL GABLES, FLORIDA 33124

Sanchez, Josceline

Other Institutions Attended

Miami Dade College Wolfson
Inst Research Rm 5601-11
300 Ne 2Nd Ave
Miami, FL 33132-2204
Miami Coral Park Senior Hs
8865 Sw 16Th St
Miami, FL 33165-7802

External Degrees

Miami Dade College Wolfson
ASSOCIATE OF ARTS 2016/04/30

Cognates

Arts & Humanities Cognate
Individualized Cognate in A&H Cognate
Completed

People & Society Cognate
Accounting Major
Completed

STEM Cognate
Science and Society Cognate
Completed

Transfer Credits
Transfer Credit from Miami Dade College Wolfson
Applied Toward Undergraduate Arts & Sciences Program

Fall 2016

Course		Course Title	Attempted	Earned	Grade	Qty Pts
ACC	211	PRIN FINANCIAL ACC	3.000	3.000	A	0.000
ACC	212	MANAGERIAL ACCOUNTING	3.000	3.000	A	0.000
BIL	101	INTR BIOLOGICL SCI	3.000	3.000	A	0.000
CHM	103	CHM FOR LIFE SCI I	3.000	3.000	A	0.000
COS	211	PUBLIC SPEAKING	3.000	3.000	A	0.000
ECO	212	ECON PRIN & PROBS	3.000	3.000	B	0.000
ECO	211	ECON PRIN & PROBS	3.000	3.000	A	0.000
ENG	105	ENG COMPOSITION I	3.000	3.000	A	0.000
ENG	106	ENG COMP II	3.000	3.000	C	0.000
ENG	105	ENG	0.000	0.000	F	0.000
MAS	201	INTRO BUS STAT	3.000	3.000	A	0.000
MKT	100T	TRANSFER CREDIT ELECTIVE	3.000	3.000	A	0.000
MTH	101	ALGBRA FOR COL STU	3.000	3.000	B	0.000
MTH	130	INTRO CALCULUS	3.000	3.000	C	0.000
MTH	105	ALGEBRA & TRI.	5.000	5.000	A	0.000
MTH	161	CALCULUS I	5.000	5.000	A	0.000
PHI	101	INTRO TO PHI	3.000	3.000	B	0.000
PHI	100T	TRANSFER CREDIT ELECTIVE	3.000	3.000	A	0.000
PSY	100T	TRANSFER CREDIT ELECTIVE	3.000	3.000	A	0.000
TRN	100T	TRANSFER CREDIT ELECTIVE	4.000	4.000	A	0.000
TRN	100T	TRANSFER CREDIT ELECTIVE	3.000	3.000	A	0.000

Course Trans GPA: 0.000 Transfer Totals: 68.000 65.000 0.000

Beginning of Undergraduate Record

Fall 2016

Undergraduate Arts & Sciences
Economics Major

Course	Course Title	Attempted	Earned	Grade	Qty Pts
AAS 150	INTRO.AFRICANA STU Writing Credit	3.000	3.000	A-	11.100
Instructor:	Carolina Villalba				
BUS 206	PRIN INTL BUS	3.000	3.000	A	12.000
Instructor:	Chei Hwee Chua				
MGT 304	ORGNIZTNL BEHAVIOR	3.000	3.000	A	12.000
Instructor:	George Williamson				
MKT 301	MKT FOUNDATIONS	3.000	3.000	A-	11.100
Instructor:	Vamsi Kanuri				
MSC 101	SURV OF OCEANGRPHY	3.000	3.000	A	12.000
Instructor:	Harry DeFerrari				
UMX 100	UMX 100	0.000	0.000	A	0.000
Instructor:	Kiaira McCoy				

			Earned Credits	Graded Credits	Qty Pts
UM Semester GPA	3.880	UM Semester Totals	15.000	15.000	58.200
		Sem Course/Test Transfer Totals	65.000		
		Semester Combined Totals	80.000	15.000	58.200

54200980 Sex ###-##
Student ID SSN

06/12/2022

UNIVERSITY OF MIAMI

MIAMI

CORAL GABLES, FLORIDA 33124

Sanchez, Josceline

UM Cum GPA	3.880	UM Cumulative Totals	15.000	15.000	58.200
		Cum Course/Test Transfer Totals	65.000		
		Cum Combined Totals	80.000		

Term Honor: PROVOST'S HONOR ROLL & DEAN'S LIST

Academic Standing Effective 2016/12/20: Good Standing

Spring 2017

Undergraduate Business
Accounting Major

Course	Course Title	Attempted	Earned	Grade	Qty Pts
ACC 311	INTERMED ACC I	3.000	3.000	A	12.000
Instructor:	Michael Werner				
ACC 403	FUND. OF TAXATION	3.000	3.000	A	12.000
Instructor:	Mario Perez				
BSL 212	INTRO TO BUS LAW	3.000	3.000	A	12.000
	Writing Credit				
Instructor:	Glen Waldman				
BUS 150	BUS ANALYTICS	3.000	3.000	A	12.000
Instructor:	Geraldine Perez				
FIN 302	FUNDMNTLS OF FIN	3.000	3.000	A	12.000
Instructor:	Stuart Webb				
MAS 202	INTERMED BUS STAT	3.000	3.000	A	12.000
Instructor:	Ming Wang				

			Earned Credits	Graded Credits	Qty Pts
UM Semester GPA	4.000	UM Semester Totals	18.000	18.000	72.000
UM Cum GPA	3.945	UM Cumulative Totals	33.000	33.000	130.200
		Cum Course/Test Transfer Totals	65.000		
		Cum Combined Totals	98.000		

Term Honor: PRESIDENT'S & PROVOST'S HONOR ROLLS & DEAN'S LIST

Academic Standing Effective 2017/05/16: Good Standing

Fall 2017

Undergraduate Business
Accounting Major

Course	Course Title	Attempted	Earned	Grade	Qty Pts
ACC 312	INTRMED ACC II	3.000	3.000	A+	12.000
Instructor:	Michael Werner				
ACC 402	AUDITING	3.000	3.000	A	12.000
Instructor:	Joseph Genovese				
ACC 411	ADVANCED ACCOUNTING	3.000	3.000	A-	11.100
Instructor:	Miguel Minutti-Meza				
BTE 210	BUS TECH & INNOVATION	3.000	3.000	A+	12.000
Instructor:	Geraldine Perez				
BUS 300	CRIT THNK PERSUASN	3.000	3.000	A-	11.100
	Writing Credit				
Instructor:	Don Donelson				
MGT 303	OPERATIONS MGT	3.000	3.000	A	12.000
Instructor:	Xin Geng				

			Earned Credits	Graded Credits	Qty Pts
UM Semester GPA	3.900	UM Semester Totals	18.000	18.000	70.200
UM Cum GPA	3.929	UM Cumulative Totals	51.000	51.000	200.400
		Cum Course/Test Transfer Totals	65.000		
		Cum Combined Totals	116.000		

Term Honor: PROVOST'S HONOR ROLL & DEAN'S LIST

Academic Standing Effective 2017/12/28: Good Standing

Spring 2018

Undergraduate Business
Accounting Major

Course	Course Title	Attempted	Earned	Grade	Qty Pts
ACC 301	COST ACCOUNTING	3.000	3.000	A	12.000
Instructor:	Mark Friedman				
ACC 404	ADVANCED TAXATION	3.000	3.000	A	12.000
Instructor:	Saira Fida				
ACC 406	SYSTEMS	3.000	3.000	A	12.000
Instructor:	Mark Friedman				
BSL 401	THE LAW FIN TRN	3.000	3.000	A	12.000
	Writing Credit				
Instructor:	Vanessa Guzzi				
BUS 400	SENIOR EXPERIENCE BUSINESS	0.000	0.000	S	0.000
Course Topic:	Senior Experience for Business				
Instructor:	Elisah Lewis				
MGT 401	STRATEGIC MGT	3.000	3.000	A-	11.100
	Writing Credit				
Instructor:	Alejandro Ruelas-Gossi				

			Earned Credits	Graded Credits	Qty Pts
UM Semester GPA	3.940	UM Semester Totals	15.000	15.000	59.100

54200980 Sex ###-##
Student ID SSN

06/12/2022

UNIVERSITY OF MIAMI

MIAMI

CORAL GABLES, FLORIDA 33124

Sanchez, Josceline

UM Cum GPA	3.932	UM Cumulative Totals	66.000	66.000	259.500
		Cum Course/Test Transfer Totals	65.000		
		Cum Combined Totals	131.000		

Term Honor: PROVOST'S HONOR ROLL & DEAN'S LIST

Academic Standing Effective 2018/05/15: Good Standing

Degrees Awarded

Degree:	BACHELOR OF BUSINESS ADMINISTRATION
Confer Date:	2018/05/11
Degree Honors:	Magna Cum Laude
	Accounting Major
	Individualized Cognate in Arts & Humanities Cognate
	Science and Society Cognate

End of Undergraduate & Graduate